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URANIUM LODE MINING CLAIMS ON FEDERAL LANDS

REPORT

TOGETHER WITH SEPARATE VIEWS

BY THE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

SECOND SESSION

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LETTER OF TRANSMITTAL

House of Representatives,
Subcommittee on Oversight and
Investigations of the Committee on
Interstate and Foreign Commerce,
Washington, D.C., December 1978.

Hon. Harley O. Staggers,
Chairman, Committee on Interstate and Foreign Commerce,
Washington, D.C.

Dear Mr. Chairman: The attached report of the Subcommittee on Oversight and Investigations reviews the methods and procedures by which uranium lode mining claims are located, maintained, and developed on Federal lands in Wyoming.

The report finds that widespread and flagrant abuses of Federal and State mining laws have occurred over the past decade. Those abuses include the unlawful staking and locating of uranium claims, the failure to perform required annual assessment work of $100 per claim, and the filing of false affidavits with county authorities attesting that the required work was done.

Those abuses have resulted in a situation in which (1) millions of acres of uranium-potential public lands are not being explored and developed in accordance with the intent of Congress and the Federal Mining Act of 1872, (2) utility companies and others who seek to obtain and develop public lands for the purpose of mining uranium do so at considerable legal risk because of uncertainties concerning the staking, validation, and assessment work previously performed on such claims, (3) land speculators, intent on selling an interest in uranium claims to major energy companies and utilities, have developed a significant traffic in illegally held mining claims, (4) major energy companies are implicitly condoning such practices to the extent that it is cheaper to purchase an exploratory interest in such claims from speculators than to perform the required staking, validation, and assessment work, and (5) neither the Department of Interior nor State authorities are insuring that Federal lands are being located properly and developed in accordance with the intent and purpose of the Federal mining law.

The subcommittee concludes that stronger measures, both in terms of filing requirements and enforcement action, are essential to curb those serious abuses of the Federal mining law. Accordingly, the subcommittee recommends that (1) Congress amend the Federal Mining Act of 1872 to provide that upon failure to perform the required annual assessment work, the claim holder would lose his possessory title to the claim and it would revert back to the Federal Government, and (2) Congress amend the Federal Land Policy and Management Act of 1976 to require that assessment affidavits filed with the Bureau of Land Management contain detailed information concerning the annual labor actually performed with a statement of expenditures supported by documentary evidence.

Sincerely,

John E. Moss, *Chairman,*
Subcommittee on Oversight and Investigations.

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LETTER OF TRANSMITTAL

House of Representatives,
Subcommittee on Oversight and
Investigations of the Committee on
Interior and Insular Affairs,
Washington, D.C., February 27, 1978.

Hon. Philip D. Sharp,
Chairman, Subcommittee on Interior and Environment,
House of Representatives, D.C.

Dear Mr. Chairman: Transmitted herewith is the Subcommittee's report on the hearings and investigation conducted by the Subcommittee on Oversight and Investigations of the Committee on Interior and Insular Affairs.

The report finds that widespread abuse of the public domain laws and State grants have occurred over the past decade. These abuses include the illegal acquisition of hundreds of thousands of acres of public land, tax evasion, and the diversion of millions of dollars in economic rent. Government investigations and the filing of lawsuits with some quality have resulted in the recovery of land and money.

These abuses have resulted in a loss of hundreds of millions of acres of prime, publicly owned public lands, and have caused and have been caused by inconsistent and ineffective enforcement of Federal laws and regulations. The Subcommittee finds that the Department of the Interior has failed to take adequate legal action to prevent the illegal acquisition of public lands, to recover the stolen property, to identify and prosecute those responsible for such claims, (2) land speculators, brokers, or others who have sought to obtain claims by paying owners, agents, and others, have evidenced a sophisticated knowledge of the mining laws, (3) major oil companies are implicated in some of the abuses, (4) the Department of the Interior has failed to provide a consistent interpretation of the mining laws, and (5) the Department has failed to provide a consistent standard for the issuance of patents, including the proper use of the mineral entry, validation, and assessment work, and (6) neither the Department of Interior nor other authorities are issuing patents. Federal lands are being lost or improperly and developed in violation of the intent and purposes of the Federal mining laws.

The subcommittee also finds that abuses have been made in terms of filing requirements and enforcement actions, in regard to such those serious abuses of the Federal mining laws. Accordingly, the subcommittee recommends that (1) Congress amend the Federal Mining Act of 1872 to add the fine upon failure to perform the required annual assessment work, the claim holder would lose his possessory title to the claim and it would revert back to the Federal Government, and (2) Congress amend the Federal Land Policy and Management Act of 1976 to require that assessment affidavits be filed with the Bureau of Land Management (BLM) in the Federal information computing the annual labor actually performed, with a statement of expenditures supported by documentary evidence.

Sincerely,

John E. Moss, Chairman,
Subcommittee on Oversight and Investigations.

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URANIUM LODE MINING CLAIMS ON FEDERAL LANDS

I. Introduction

Evidence and testimony presented at subcommittee hearings in October 1977, disclosed widespread illegal practices involving the staking and maintaining of uranium lode mining claims on public lands. Those practices include the unlawful staking and locating of mining claims, the failure to perform required annual assessment work of $100 per claim, and the filing of false affidavits with county authorities attesting that the required work was done. The subcommittee's inquiries centered on the State of Wyoming, which has the largest number of uranium claims staked on public lands.

Under the Federal Mining Act of 1872 and Wyoming mining laws, a mineral prospector can establish and maintain a claim on Federal lands by properly staking and validating a claim and subsequently spending a minimum of $100 per year in assessment work for exploratory and developmental purposes. A mining claim is a trapezoid of approximately 20 acres in size. To stake a mining claim on Federal lands in Wyoming, one must mark the surface boundaries of the claim with six posts, one at each corner and one at the center of each side line, and post a notice on the discovery monument containing the name of the claim and locator and the date of discovery. The validation requirement consists of sinking a discovery shaft; or digging a pit ten feet along the vein and ten feet deep; or drilling a hole or holes, not less than 1½ inches in diameter, aggregating at least 50 feet in depth. Upon completion of the staking and validation work, a location certificate containing certain descriptive must be recorded in the county clerk's office.

The failure to properly stake and validate a claim, regardless of any subsequent assessment work, renders that claim vulnerable to relocation, or overstaking, by a third party. Similarly, the failure to perform the required annual assessment work subjects the claim to relocation in the same manner as if the claim had never been located.

The failure to properly locate and to perform the required assessment work on uranium lode mining claims on public lands has lead to a situation in which:

(1) Millions of acres of uranium-potential public lands are not being explored and developed in accordance with the intent of Congress and the Federal Mining Act of 1872,

(2) Utility companies and others who seek to obtain and develop public lands for the purpose of mining uranium do so at considerable legal risk because of uncertainties concerning the staking, validation, and assessment work previously performed on such claims,

(3) Land speculators, intent on selling an interest in uranium claims to major energy companies and utilities, have developed a significant traffic in illegally held mining claims,

(4) Major energy companies are implicitly condoning such practices to the extent that it is cheaper to purchase an exploratory interest in such claims from speculators than to perform the required staking, validation, and assessment work, and

(5) Neither the Department of Interior nor State authorities are insuring that Federal lands are being located properly and developed in accordance with the intent and purpose of the Federal Mining Act of 1872.

Based on the widespread abuses of Federal and State mining laws disclosed through evidence and testimony presented at the hearings, the subcommittee makes the following recommendations:

(1) That Congress amend the Federal Mining Act of 1872 to provide that upon failure to perform the required annual assessment work, the claim holder would lose his possessory title to the claim and it would revert back to the Federal Government. Under present practices, noncompliance with the assessment requirement simply opens the claim to relocation by a third party. That remedy is impractical and unworkable because there exists in the mining industry today an unwritten agreement, adhered to by all except a few independent claim stakers, that energy companies will not overstake each others claims.

(2) That Congress amend the Federal Land Policy and Management Act of 1976, which provides for the filing of location certificates and assessment affidavits for all mining claims on public lands with the Bureau of Land Management (BLM), to require that the assessment affidavits contain, at a minimum, the following documentation:

(a) when, where and by whom the annual labor was performed

(b) a detailed description of the annual labor actually performed

(c) a statement of expenditures of the annual labor actually performed supported by invoices, cancelled checks, receipts, or other documents of verification

The 95th Congress considered (a) legislation introduced by the Administration which would supplant the Federal Mining Act of 1872 by placing all locatable minerals under a leasing system, rather than the present claim location method, and (b) legislation endorsed by the mining industry which would retain the claim location method but repeal significant provisions of the 1872 Act. That proposed legislation was not enacted.

Pending comprehensive legislative reform of the current mining law, the Subcommittee concludes that stronger measures, both in terms of filing requirements and enforcement action, are essential to curb the widespread and flagrant abuses of the Federal mining law.

II. Summary

The subcommittee's October 1977 hearings were a continuation of investigation instituted in 1976, regarding the supply and price of uranium. Hearings held in June 1977, detailed secret agreements among nations and companies and the methods by which an international cartel manipulated the price and supply of uranium in the world market. When the cartel was organized in 1972, uranium sold for $5 per pound. Today, the price has escalated to over $40. The uncertainty of supply and spiraling prices caused several large utilities

to turn to uranium exploration and development in order to fuel their own reactors.

John W. MacGuire of Casper, Wyo., whose company became the largest claim-staking service in the country, was a key witness at the hearings. Mr. MacGuire cited widespread abuses of Federal and State mining laws which he had encountered and which were substantiated by Subcommittee investigation and documented through evidence and testimony presented at the hearings.

The hearings disclosed substantial abuses of the mining laws, as well as violations of Wyoming criminal laws, by Phillip E. Flanagan, President of General Nuclear, who located some 30,000 uranium lode mining claims during 1967–70 on public lands in Wyoming. During 1973–77, Mr. Flanagan filed annual assessment affidavits for 20,300 uranium claims located in seven Wyoming counties attesting that his company had performed the required assessment work of $100 per claim. If true, this would amount to over $2 million per year and over $10 million for the 5-year period.

Mr. Flanagan asserted his right against self-incrimination under the Fifth Amendment fourteen times in response to questions involving the magnitude of General Nuclear's uranium claim holdings, the affidavits of assessment filed by him, and the value of labor or improvements performed on the claims.

In response to a subpoena served on him a month prior to the hearings, Mr. Flanagan was unable to produce any records or evidence showing that General Nuclear had performed the required annual assessment work. He did produce two written exploratory agreements and recalled a third between General Nuclear and other companies indicating that only 1,843 of his claims were subject to any type of exploration during 1973–77. None of these companies renewed their options on the claims.

According to Mr. Flanagan, the value of the assessment work done on his claims in 1977 consisted of his own geologic time, which he valued at $100 per hour, plus an estimated $100,000 in out-of-pocket expenses. Assuming he spent half his time doing geologic work at $100 an hour, equating to $100,000 for the year, plus $100,000 in expenses, it is obvious that General Nuclear's total 1977 assessment expenditure of $200,000 was woefully short of the $2 million required by law. Furthermore, it is doubtful that his geologic time could qualify as assessment work since, under Federal law, such work qualifies only after it is verified by a detailed report filed in the appropriate counties. General Nuclear failed to file any such reports for its 20,300 claims. Mr. Flanagan also supplied for the record General Nuclear's gross revenue for the 1977 assessment year The figure he furnished was only $16,300.

The subcommittee concludes that General Nuclear did not perform the required annual assessment work on its claims, and that Mr. Flanagan's affidavits attesting that it did are false. As Daniel M. Burke, the prosecuting attorney of Natrona County, Wyo., testified, the making of a false affidavit is a felony under Wyoming law.

General Nuclear's corporate goal was not to explore and develop its vast claim holdings with its own resources, but rather to peddle or sell an exploratory interest in the claims to a major energy company, often for less than $10 a claim, plus the promise of future royalties in the event uranium was discovered and mined. In 1977, General Nuclear concluded two such agreements with major oil companies,

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which illustrate the system existing today whereby public mineral lands are held improperly for speculative purposes—a system which is being condoned and encouraged by the Nation's largest oil companies.

In September 1977, Phillips Petroleum Co. executed an option agreement with General Nuclear for some 9,500 of its Wyoming uranium claims, paying General Nuclear approximately $70,000, or $7.50 a claim, for this exploratory interest. This transaction clearly demonstrates how a major energy company is willing to look the other way in acquiring an exploratory interest in uranium claims which a reasonable inquiry would reveal to be illegally held.

The Phillips' witness testified that when his company acquires mining properties from other companies it checks the courthouse records to see if the annual assessment affidavits have been filed. Phillips relied on Mr. Flanagan's affidavits and chose to ignore myriad indicators pointing to the falsity of the affidavits.

It is widely known in the mining industry today that many uranium claims are held by individuals or companies without the annual assessment work being performed. Mr. MacGuire estimated that 25 percent of all uranium claims are being held improperly, and the Phillips' witness acknowledged that it was a good possibility that millions of acres of land are being tied up by the filing of false assessment affidavits.

In March 1977, Exxon Co., U.S.A. entered into a lease and purchase option agreement for some 225 General Nuclear claims located on Mr. Burke's ranch in Natrona County, Wyo. Exxon paid General Nuclear $6,300 for the exploratory interest in the claims. Exxon's witness testified that when acquiring uranium claims, Exxon normally checks the recorded documents in the courthouses. He stated that upon receipt of information indicating the claims might be improper, Exxon's policy was to make additional inquiries. In this instance, Exxon was aware of a question concerning the validity of the claims since Mr. Burke, the owner of the land on which the claims were located, advised Exxon that the claims had not been staked and validated and no assessment work had been done.

Exxon's policy notwithstanding, the evidence suggests Exxon acquired the claims without any serious attempt to determine whether the actual assessment work had been performed by General Nuclear. Exxon's representatives contacted Mr. Flanagan and transacted the deal in 5 minutes. They did not inquire about prior drilling, geologic data or assessment work. They were furnished with nothing other than a map.

There appear to be several reasons why companies, such as Exxon and Phillips, provide a ready market for those who illegally hold public domain lands for speculative purposes. First, it is much cheaper for an energy company to acquire an exploratory interest in this manner, rather than to stake and validate the claims itself. Second, there is almost no risk of losing the claims to another company through overstaking since there exists an unwritten code that energy companies will not overstake each other.

The hearings also disclosed substantial abuses of the Federal and State mining laws by Fremont Energy Corp. of Denver, Colorado, and its principal officers, William J. Murphy and Ralph L. Schauss, who

have controlled some 18,600 uranium claims in the Red Desert area of Wyoming since the late 1960's. In this instance, Fremont peddled its claims to Washington Public Power Supply System (WPPS), a municipal corporation that generates and sells electric power to utilities in the Pacific Northwest. Concerned over the dramatic increase in uranium prices and the uncertainty of supply. WPPS decided in 1976 to embark on a program leading to the ownership and mining of uranium deposits to fuel its five nuclear power plants currently under construction.

Evidence and testimony presented at the hearings disclosed that Fremont's 18,600 Red Desert claims were not located and validated in accordance with Federal and State mining laws, nor was the required annual assessment work performed on those claims. Elmer L. Gibson, who staked the claims for Ralph Schauss during 1968–71, testified that at Schauss' instruction the staking was incomplete and the only validation drilling was done on claims near the roads, which constituted about 5 percent of the claims. Mr. Gibson advised that not one claim he staked for Mr. Schauss in the Red Desert was legal, and that Mr. Schauss knew it. He also testified that he staked some 20,000 other uranium claims for Mr. Schauss in Utah and Colorado and that these were done in the same improper manner.

The assessment affidavits filed annually by Schauss, Murphy and Fremont were instruments of deception, thought to be cleverly designed to circumvent the law, in that the wording put the assessment work in the present or future tense, rather than the past tense as clearly required by law.

During 1970–76, Mr. Schauss filed, or caused to be filed annual assessment affidavits for some 7,200 of the claims. He admitted at the hearings that he had failed to perform $100 of assessment work per claim. He estimated that $40,000–$50,000 was spent on these claims annually, instead of the required $720,000. He was unable to produce records or evidence to support this estimate. The few records he produced in response to a subpoena revealed that during the years 1971–74, he billed his partner for half of the assessment expenditures made which averaged just under $6,000 a year, or less than $1 per claim, rather than the required $100.

In response to the subcommittee's subpoena, Mr. Murphy furnished an affidavit containing his "estimates" of the labor and materials which constituted the assessment work done on the 18,000 Red Desert claims during 1970–77. His estimate of approximately $3 million expended in assessment work during this period is not only erroneously high, it falls far short of the $12.6 million that should have been spent in accordance with the law.

Of the $3 million Mr. Murphy says was spent on the claims, he estimates that $1.3 million was expended in exploration work by three major oil companies—Union, Mobil, and Getty—during 1969–70. Mr. Murphy estimates Union spent $500,000, but Union advised it spent only $165,781. He estimates Getty spent $450,000, but Getty advised it spent only $63,975. He estimates Mobil spent $350,000, but Mobil advised it spent only $21,763. Thus, the three companies actually spent only $251,519, or $1,048,481 less than Mr. Murphy's estimates.

When confronted with the oil companies' figures at the hearing, as contrasted with his own, Mr. Murphy was adamant in supporting his own estimates, suggesting that "* * * whoever prepared this document really has missed his total accounting * * *" and that "the information is coming from the wrong man who is not aware of the total cost of his exploration efforts." In light of Mr. Murphy's insistence that his estimates were more accurate than the companies' figures, the subcommittee double-checked with the companies. Each confirmed its figures and Mobil noted: "Mr. Murphy's ability to estimate seems to be poor."

In July 1976, Mr. Murphy outlined a proposed joint venture 2-year exploration program to WPPS involving the 18,600 Red Desert claims. WPPS and Fremont conducted negotiations over the next several months, and in November 1976, WPPS engaged the services of a fuel consulting firm to evaluate the Red Desert exploration project proposed by Fremont, allowing the firm only 10 days to complete its report. The firm completed its report on schedule, but noted that its opinions were "necessarily cursory" and that because the "magnitude of the work far outstripped the time available * * * we do not feel that this review is sufficient to either strongly advocate or condemn the offering."

Questioned at the hearings concerning the necessity for the haste in obtaining this evaluation report, WPPS's witness, Edwin F. Alden, indicated that if WPPS were to enter into the agreement, it wanted to do so in time for the 1977 drilling season. He further advised that Fremont had indicated that WPPS had better move quickly or Fremont would be forced to look elsewhere for a partner.

Motivated by the fact that it would not have to put up any front-end money in the venture with Fremont, WPPS moved ahead. In January 1977, WPPS obtained a title opinion on the claims, through Fremont, from a Wyoming lawyer who noted that while the location certificates and assessment affidavits for the claims were appropriately filed, that WPPS should satisfy itself by actual field examination of the evidence of discovery and performance of assessment work that the attestations in the documents were correct.

In February 1977, Mr. Alden and a WPPS geologist spent a day examining the Red Desert claim site. They advised WPPS that the claims appeared to be valid "in most cases or most instances." Yet, in March 1977, John MacGuire and his foreman flew over the Red Desert claims in an airplane and found almost no evidence of staking. And a subcommittee investigator spent a day driving the claim area in September 1977, and found less than 10 stakes.

In February 1977, WPPS also retained a Casper, Wyo. law firm to, among other things, investigate Fremont's reputation. In conversations with Mr. Alden on February 9, 1977, and in subsequent communications to him, the law firm expressed substantial doubts about WPPS going ahead with the agreement, indicating there were severe risks involved in the venture. The law firm emphasized the following points to WPPS: The requirements of Federal and State mining laws regarding the location and validation of claims; that Fremont was unwilling to defend or make good its title against any adverse claimants; that a title opinion is only the "tip of the iceberg;" that the law firm was concerned about the validity of the claims since it had serious

doubts that the requirement of $1,800,000 in annual assessment work had been done; and that the "quickest and easiest way to test the validity of these claims * * * would be * * * to require solid and unequivocal evidence that Fremont Energy has expended $1,800,000 each year * * * of assessment work on these claims."

The law firm also advised WPPS that John MacGuire had checked the claims, was convinced they were invalid, and offered to prove it to WPPS.

Despite these strong admonitions from its Wyoming counsel and Mr. MacGuire's offer, WPPS entered into an agreement with Fremont on March 14, 1977, for the mineral rights to the 18,600 Red Desert claims and agreed to expend $1.5 million in public bond money in the 2-year exploratory effort.

WPPS's vulnerability concerning possible defects in the title to the claims was twofold: (a) the claims were not located and validated in accordance with the mining laws, and (b) the required $100 per claim annual assessment work was not performed. Had WPPS exercised a modicum of curiosity concerning the background of the Red Desert claims, it would have been aware that three major companies conducted exploratory drilling in 1969–70, and relinquished their interest in the claims, indicating that any uranium potential they might have found was insufficient for commercial production at the then price of less than $5 per pound. The fact that the three companies did not recontact Fremont to produce the claims when the price of uranium rose to over $40 per pound indicates the nature of the uranium potential in these Red Desert claims, at least in the opinion of three companies with considerably more expertise in the business than WPPS had. Additionally, had Murphy and Schauss performed the required $10 million in assessment work on the claims from 1970–76, the exploratory effort doubtlessly would have determined the true uranium potential of the Red Desert. WPPS would not have had to use its funding, as it is now doing, to determine something that Murphy and Schauss should have done had they complied with the law.

Thus, the failure of Murphy, Schauss and Fremont to perform assessment work on the 18,600 Red Desert claims from 1970 through 1976 effectively tied up the lands and delayed the discovery development of new uranium reserve potentials.

On November 21, 1978, the subcommittee determined through WPPS' Washington, D.C. counsel that as of September 1, 1978, some 2,700 of the 18,600 Red Desert claims had been restaked by Fremont at WPPS' request. Thus far, the expense of this restaking has been borne by Fremont, although Fremont is attempting to get WPPS to pay the cost. In addition, no assessment affidavits have been filed for the 18,600 Red Desert claims for the assessment year ending September 1, 1978. WPPS' counsel advised that approximately $1 million was expended during the 1978 assessment year, which would cover about 10,000 of the claims. Under Wyoming mining laws, the assessment affidavits must be filed within 60 days after the work is completed and the work must be completed by September 1 each year. Thus, the assessment affidavits should have been filed by November 1, 1978. As of November 21, 1978, they had not been filed, meaning that Fremont is delinquent in its filings.

WPPS' counsel also advised that WPPS has not reached a decision concerning whether to excercise its option on the claims. WPPS has until March 14, 1979, to do this.

The subcommittee's investigation disclosed that Gulf Oil Corp. was directly involved in improper claim-staking practices. In 1971, John MacGuire's company located and validated 198 uranium claims for Gulf in the Medicine Bow National Forest in Wyoming. In 1975, Gulf decided to acquire additional claims adjacent to the 198 claims. Using its own staking crew instead of contracting for the service, Gulf located 247 claims during July 1975. Gulf recorded the location certificates on August 19, 1975; yet, the certificates state the validation drilling was performed during August 21–September 2, 1975, which, of course, is after the certificates were recorded.

John MacGuire checked the claims, found they were improperly staked and that no drillling had been done, and overstaked some of the claims on August 24, 1975. Mr. MacGuire advised Gulf of this by letter of August 25th. Gulf then engaged a Colorado company to validate the claims for $10,500, but the company drilled very few of the required holes with its portable drill due to the hard ground. Gulf officials advised that the premature filing of its location certificates was simply an error. However, it would appear that Gulf had no intention of doing the validation drilling on its claims—until John MacGuire overstaked them.

Following the hearings, subcommittee Chairman John E. Moss requested that the Securities and Exchange Commission thoroughly investigate the mining claim transactions involving companies controlled by Messrs. Murphy and Schauss to determine whether any of those activities violated Federal laws of the SEC and/or the Internal Revenue Service. That investigation is continuing.

Chairman Moss also referred the hearing record to the BLM and the attorney general of Wyoming for their assistance in investigating these abuses of Federal and State mining laws. Under Federal law, the filing of false location certificates or assessment affidavits with the BLM would constitute a violation of 18 USC 1001, a criminal statute relating to the making of false statements to the Government. At this writing, the State of Wyoming has not yet undertaken an investigation of the matters disclosed at the subcommittee's hearings.

III. Recommendations

The 95th Congress considered (a) legislation introduced by the administration which would supplant the Federal Mining Act of 1872 by placing all locatable minerals under a leasing system, rather than the present claim location method, and (b) legislation endorsed by the mining industry which would retain the claim location method but repeal significant provisions of the 1872 act. That proposed legislation was not enacted.

Pending comprehensive legislative reform of the current mining law, the subcommittee concludes that stronger measures, both in terms of filing requirements and enforcement action, are essential to curb the widespread and flagrant abuses of the Federal mining law.

Accordingly, the subcommittee recommends:

(1) That Congress amend the Federal Mining Act of 1872 to provide that upon failure to perform the required annual assessment work, the claim holder would lose his possessory title to the claim and it would revert back to the Federal Government. Under present practices, noncompliance with the assessment requirement simply opens the claim to relocation by a third party. That remedy is impractical and unworkable because there exists in the mining industry today an unwritten agreement, adhered to by all except a few independent claim stakers, that energy companies will not overstake each others claims.

(2) That Congress amend the Federal Land Policy and Management Act of 1976, which provides for the filing of location certificates and assessment affidavits for all mining claims on public lands with the Bureau of Land Management (BLM) of the Department of Interior, to require that the assessment affidavits contain, at a minimum, the following information:

(a) when, where and by whom the annual labor was performed

(b) a detailed description of the annual labor actually performed

(c) a statement of expenditures of the annual labor actually performed supported by invoices, cancelled checks, receipts, or other documents of verification

The Federal Land Policy and Management Act of 1976 was a step in the right direction insofar as it requires all uranium claims to be filed with the BLM. Its purpose was to eliminate dormant mining claims and provide Federal land offices with a valid record of all mining claims. The act requires the owner of an unpatented mining claim located on Federal land to file on a yearly basis with the BLM evidence of annual assessment work performed during the preceding assessment year. This may be in the form of either an official copy of the assessment affidavit filed in the county courthouse or an official copy of the detailed report concerning geological, geochemical, and geophysical surveys filed in the county courthouse. Official copies of the location certificates filed in the counties are also required to be filed with BLM.

Unfortunately, neither the existing statutes nor BLM regulations address the form or content of the affidavits of assessment. Indeed, the subcommittee's investigation found that most assessment affidavits, such as General Nuclear's, are filed only in general conclusory terms, and some, such as Fremont's, are designed to mislead those who might otherwise be interested in claiming the land.

The subcommittee found that effective enforcement of the mining laws is essentially nonexistent. The hearings revealed that while widespread violations of the mining laws have existed for a number of years in Wyoming, no prosecutions have been brought and only the county attorney of Natrona County has undertaken a serious investigation of the apparent violations of Wyoming criminal law.

On the Federal level, the BLM is the agency responsible for administering the Federal mining laws. Since enactment of the Federal Land Policy Management Act of 1976, a Federal criminal prosecution pursuant to 18 USC 1001 can be maintained when false statements or affidavits are filed with the BLM.

It would appear that the BLM has other remedy as well, in addition to criminal prosecution, which can be directed against those who have improperly held mining claims by filing false affidavits of assessment, as cited in the following regulation:

43 CFR 3851.3(a)—Failure of a mining claimant to comply substantially with the requirement of an annual expenditure of $100 in labor or improvements on a claim imposed by section 2324 of the Revised Statutes (30 USC 28) will render the claim subject to cancellation.

The serious and widespread abuses of the Federal mining laws revealed by the hearings make it imperative that the BLM mount and maintain a vigorous oversight and enforcement effort to insure that public mineral lands are being claimed and held in accordance with the law. This would not require substantial expenditures of money or significant increases in personnel. BLM offices in States with large numbers of uranium lode mining claims—such as Wyoming, Colorado, and Utah—could hire and train one person in each State whose job would be to spot check the validity of the location certificates and assessment affidavits filed with the BLM by examining the claims on the ground and verifying the expenditures allegedly made for annual labor. In other Western States having very few uranium mining claims, the BLM could employ a person to cover several States.

IV. Background

The Subcommittee on Oversight and Investigations held hearings on October 13, 14 and 17, 1977, to examine the methods and procedures by which uranium lode mining claims are located, maintained and developed on public lands.

The subcommittee's jurisdiction and responsibility in uranium matters is clear. Rule X of the House of Representatives specifically provides that the Committee on Interstate and Foreign Commerce "shall have the function of reviewing and studying on a continuing basis, all laws, programs and government activities relating to nuclear energy."

The discovery and development of new uranium reserves in this country is a key factor in the solution of our energy problems. At present, there are 65 licensed nuclear reactors in operation in the United States. By the mid-1980's, it is anticipated that an additional 164 reactors will be operative. Currently, the United States produces some 13,000 tons of uranium concentrate, or "yellowcake," annually. But by the mid-1980's, it is estimated that we will need to produce over 45,000 tons annually to meet our reactor requirements.[1]

The uranium industry has experienced several peaks and valleys during the 30 years of its existence. The industry began in 1947, when the Atomic Energy Commission offered to purchase uranium produced in the United States and authorized its mining on Federal lands. The first peak occurred in the 1950's, following significant reserve discoveries in Colorado, Wyoming, Utah, and New Mexico. By 1958, however, sufficient reserves existed to meet the needs of the Federal Government, the sole customer, and the boom was over.

[1] Energy Research and Development Administration.

Then in 1967, Congress authorized private ownership of fissionable material and the industry headed for another peak—this time joined by the oil companies. But the uranium business began to level off in 1970, due in part to the mistaken belief that uranium was plentiful. In recent years, drastic changes have occurred in uranium market conditions, notably in the areas of price and supply.

During 1976–77, the subcommittee conducted inquiries regarding the supply and price of uranium. In June 1977, the subcommittee held hearings detailing secret agreements among nations and companies and the methods by which an international uranium cartel manipulated the price and supply of uranium in the world market.[2] The hearings disclosed that when the cartel was organized in 1972, the price of uranium was $5 per pound and threatening to drop to $4. Today, in the space of a few short years, the price has escalated to over $40 per pound, a 700-percent increase.

Faced with uncertain supply and spiraling prices in what was clearly a seller's market, several large utilities in this country turned to uranium exploration and development in order to fuel their own reactors. At the subcommittee's hearings in August 1977, officials of the Tennessee Valley Authority testified that TVA was engaged in just such an effort.[3]

Obviously, when utilities, lacking both experience and expertise, find it necessary to explore for uranium in an effort to assure future supplies at stabilized prices, the rules by which uranium-rich public lands are acquired and developed and the enforcement of those rules becomes of critical importance.

Accordingly, in 1977, the subcommittee focused attention on the question of whether uranium claims, which tie up literally millions of acres of public lands, are being located, maintained and developed in accordance with Federal and State mining laws. Field inquiries were conducted to determine whether these enormous tracts of uranium-potential Federal lands, once acquired by independent claim-stakers and energy companies, are being developed in a diligent manner. The subcommittee's inquiries centered on the State of Wyoming, which has the largest number of uranium claims staked on public lands.

The governing authority for staking mining claims on public lands is vested in one of our oldest laws—the Federal Mining Act of 1872. Congress enacted this legislation to promote development of the mineral resources of the United States. The act provides that all valuable mineral deposits in Federal lands "* * * are hereby declared to be free and open to exploration and purchase * * * by citizens of the United States * * * under regulations prescribed by law."

In order to encourage development of the Nation's mineral resources, Congress, by this act, made it possible for any citizen to prospect for minerals and to locate mining claims on public lands. Congress intended that each person should have a possessory right to his claims, and ultimately have the right to patent and purchase those claims, provided that he complied with the Federal law and State regulations governing those claims which require that certain prescribed work be

[2] "International Uranium Cartel," hearing before the Subcommittee on Oversight and Investigations, Committee on Interstate and Foreign Commerce, 95th Cong., 1st sess., serial No. 95–39.
[3] Ibid.

performed to demonstrate a diligent and good-faith effort on the part of the locator to develop his claims.

The Federal Mining Act of 1872 describes a mining claim as a trapezoid not exceeding 1,500 feet in length and 600 feet in width. Those dimensions constitute a claim of approximately 20 acres in size.

The act delegated authority to States and local jurisdictions to make rules and regulations governing the location, manner of recording and amount of work necessary to hold possession of a mining claim, subject to the following requirements:

(1) the location must be distinctly marked on the ground so that its boundaries can be readily traced.

(2) all records of mining claims must contain the name of the locator, date of location, and sufficient description to identify the claim, and

(3) on each claim located, and until a patent shall have been issued therefor, not less than $100 worth of labor must be performed or improvements made during each year.

Compliance with Federal and State law assures the locator of a possessory right or title to his mining claims.

State regulations governing the location of lode mining claims on Federal lands vary among the Western States. The posting of a discovery monument is required on each claim in all States; however, about half the States require only four boundary markers, while the others require six. Only three States—Arizona, New Mexico, and Wyoming—require some form of discovery or validation drilling when a mining claim is located.

Wyoming law requires essentially the following:

(1) the surface boundaries of a mining claim must be marked by "six substantial monuments of stone or posts," one at each corner and one at the center of each side line,

(2) the posting of a notice on the discovery monument containing the name of the claim and locator, and the date of discovery,

(3) the sinking of a discovery shaft; or the digging of a pit ten feet along the vein and ten feet deep; or the drilling of a hole or holes, not less than 1½ inches in diameter, aggregating at least 50 feet in depth, with no single hole less than ten feet in depth. In Wyoming, this constitutes the discovery or validation work and is generally done by drilling five 10-foot holes within a 60-day period.

(4) within 60 days of discovery, a location certificate for each claim must be recorded in the county clerk's office containing certain descriptive data, and

(5) an affidavit or sworn statement by the locator or his agent must be recorded with the county clerk for each claim specifying the nature, date and location of the discovery drilling or validation work, by whom performed, and the type of mineral discovered. That data are incorporated in the location certificate and filed as one affidavit.

The required annual assessment work of not less than $100 worth of labor or improvements per claim must be performed during each year beginning on September 1st following the date the claim was located. Within 60 days of completion of the annual assessment work,

an affidavit must be filed with the county clerk attesting that the required amount of work was done. These documents are known as assessment affidavits or proof of labor. When two or more mining claims are contiguous and under the same ownership, the annual assessment work required on each claim may be made upon any one of the contiguous claims, if desired.

While the Federal Mining Act of 1872 provides no civil penalties or criminal sanctions for failure to comply with the law, it is a felony under Wyoming law to file false affidavits and location certificates, as follows:

> False swearing other than in judicial or administrative proceeding; false claim or voucher. Whoever, under oath or affirmation lawfully administered in any matter where an oath is authorized by law to be taken, shall wilfully, corruptly and falsely make any false certificate, affidavit, acknowledgment, declaration, or statement of any nature other than in a judicial or administrative proceeding, or whoever submits a false claim or voucher under penalty of perjury, shall be guilty of false swearing, and upon conviction shall be imprisoned in the penitentiary not more than five (5) years.[4]

Under the Federal law, if a claim is not validly located, it is subject to relocation, or overstaking, by another party. Similarly, noncompliance with the requirement to perform annual assessment work opens the claim to relocation in the same manner as if the claim had never been located, provided that the original locator has not resumed work upon the claim before relocation.

The intent of Congress in requiring at least $100 worth of labor or improvements on each claim annually can clearly be seen from the debate in the Senate on April 16, 1872. Senator Cole of California stated:

> We wish to * * * require the miner to use some little diligence and exertion in the working of his mine or the mine owner to expend some industry or capital upon it, or else leave it subject to a beneficial use by some other party.

Senator Stewart of Nevada stated:

> The object in requiring a little work to be done was to make these miners show their good faith by doing something and requiring them to keep them (their claims) up until the patent so issued * * *

Testimony and documentary evidence presented at the Subcommittee's hearings in October 1977 disclosed widespread abuses involving the staking and maintaining of uranium lode mining claims on public lands. These practices include the unlawful staking and locating of mining claims, the failure to perform required annual assessment work of $100 per claim, and the filing of false affidavits with county authorities attesting that the required work was done.

Serious abuses of Federal and State mining laws have occurred over the past decade; yet, State and local authorities have not prosecuted the individuals responsible for those offenses. The objective of these land speculators is to sell an interest in their claims, such as a lease or option to explore, to a major company engaged in uranium exploration, frequently a major oil company. Unfortunately, these land speculators remain in business because major energy companies provide a market for their phony claims, thereby sustaining and condoning their illicit activities.

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[4] Section 6-154.1 of the Wyoming statutes (1971).

The result is the tying up of millions of acres of uranium-potential public lands that are not being developed in accordance with the intent of Congress and the Federal Mining Act of 1872—public lands whose dilligent exploration is being denied to others.

John W. MacGuire, president of Natrona Service, Inc., Casper, Wyo., was a key witness at the subcommittee's October 1977 hearings. Mr. MacGuire has been engaged in locating and validating uranium lode mining claims on public lands for 12 years. His company has staked mining claims in most of the Western States and Alaska, and became the largest claim-staking service in the country, having staked over 80,000 mining claims covering 1.6 million acres of potential mineral lands. Mr. MacGuire testified concerning widespread abuses of both Federal and State mining laws.[5] These abuses were substantiated by field investigation conducted by the Subcommittee staff and presented through testimony and evicence at the Subcommittee's hearings.

Two years ago, Congress imposed an additional requirement with regard to lode mining claims on public lands. On October 21, 1976, Congress enacted the Federal Land Policy and Management Act of 1976, also referred to as the Organic Act, which provides, among other things, for the management, protection, development and enhancement of the public lands.

Section 314 of this act, relating to the recordation of mining claims and abandonment, requires that owners of unpatented lode mining claims located prior to the date of the act shall, by October 21, 1979, file with the Bureau of Land Management (BLM) of the Department of the Interior a copy of the official record of the notice of location or certificate or location which is on file in county courthouses. For claims located after the date of the act, such filing shall occur within 90 days after the date the claims are located.

In addition, the act requires that owners of unpatented lode mining claims located prior to the date of the act shall, by October 21, 1979, and prior to December 31 of each year thereafter, file with the BLM either a (1) notice of intention to hold the mining claim, (2) an affidavit of assessment work performed thereon, or (3) a detailed report relating to the assessment work performed as provided by the act of September 2, 1958. For claims located after the date of the act, such filings shall occur prior to December 31 of each year following the calendar year in which the claims were located. The failure to file the required documents "shall be deemed conclusively to constitute an abandonment" of the mining claims.

Speculation With Public Lands—the General Nuclear Case

Mr. Phillip E. Flanagan, as president of General Nuclear, a Wyoming corporation, located approximately 30,000 uranium lode mining claims on public domain lands in Wyoming during the years 1967–70.[6] When asked at the subcommittee hearings whether General Nuclear was still holding possession of approximately 20,000 of these claims as of September 1, 1977, Flanagan refused to answer and asserted his

[5] "Uranium Lode Mining Claims on Federal Lands," hearings before the Subcommittee on Oversight and Investigations, Committee on Interstate and Foreign Commerce, October 13, 14, and 17, 1977, 95th Cong., 1st sess., serial No. 95–73 (hereinafter cited as "Hearings"), testimony of John W. MacGuire, pp. 2–32.

[6] Ibid, p. 29.

right against self-incrimination under the fifth amendment of the Constitution. In all, Mr. Flanagan asserted his constitutional privilege against self-incrimination 14 times in response to questions involving the magnitude of General Nuclear's uranium claim holdings, the affidavits of assessment filed by Flanagan as president, and the value of labor or improvements performed on the claims.[7]

While Mr. Flanagan's substantive testimony was severely limited by repeated assertions of his fifth amendment rights, his very appearance at the hearings was obtained only through the persistent efforts of subcommittee staff and the U.S. Marshal's office.

To briefly recount, a subpoena duces tecum for records and documents pertaining to General Nuclear's claim holdings was issued by Chairman Harley Staggers on Spetember 7, 1977, and served by the subcommittee staff on September 13, 1977. Mr. Flanagan, claiming that he had "other fish to fry," sought to forestall compliance with the subpoena. Failing to do so, and after consultations with his counsel, Mr. Flanagan, on September 17, 1977, produced records and offered information regarding the subpoenaed items.

An additional subpoena calling for Mr. Flanagan's appearance as a witness on October 13, 1977, was authorized by the subcommittee and issued by Chairman Staggers on September 27, 1977. The U.S. Marshal's initial attempt to serve this subponea on Mr. Flanagan at his home and office in Riverton, Wyo., proved unsuccessful.

Subsequent thereto, the subcommittee staff located Mr. Flanagan on October 8, 1977, at the Sahara Hotel in Las Vegas, Nev. Notification by telephone and mailgram[8] of the subpoena was provided to Mr. Flanagan, and he stated that he would appear in Washington, D.C.

Two days later, however, on October 10, 1977, at the Denver airport, Mr. Flanagan cleverly eluded a deputy U.S. marshal who was attempting to effect actual service of the subpoena. Later that evening, Mr. Phillip Flanagan was found at the Radisson Hotel in Denver by the subcommittee staff, registered under the name of Mr. Bob Smith, and successfully served by a deputy U.S. marshal.

The obvious reluctance of Mr. Flanagan to cooperate with the subcommittee's investigation can perhaps be understood in view of the evidence which clearly demonstrates not only abuses on his part of the Federal Mining Act of 1872, but violations of Wyoming criminal laws.

Under the Federal Mining Act of 1872, the locator of a mining claim must perform at least $100 worth of "assessment work" annually for the benefit of each claim. According to Wyoming law, the locator is also required to file an affidavit in the county courthouse that he has done this work.

County courthouse records reflect that for the assessment year ending on September 1, 1977, Mr. Flanagan filed, on behalf of General

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[7] Ibid, pp. 29–40.

[8] The text of the mailgram reads as follows: "Confirming our telephone conversation of today, you are advised that pursuant to subpoena of the U.S. House of Representatives' Committee on Interstate and Foreign Commerce, Subcommittee on Oversight and Investigations, issued on September 27, 1977, your appearance as a witness is required at hearings of the subcommittee on Thursday, October 13, 1977, at 10 a.m., room 2123 Rayburn Office Building, Washington, D.C. You have a right to appear with counsel for the purpose of advising you on constitutional rights. The subcommittee will reimburse you for roundtrip coach air fare and actual expenses up to $50 per day. John Atkisson, counsel to the subcommittee."

Nuclear, affidavits of assessment work for approximately 20,300 uranium lode mining claims located in seven Wyoming counties.[9] Over 400,000 acres of public mineral lands are being possessed by General Nuclear in this manner.

One assessment affidavit was generally filed for each group of claims with the same name and in each affidavit Mr. Flanagan represented:

> * * * that annual labor and the making of improvements were performed upon the unpatented lode mining claims hereinafter described in the required amount to comply with the provisions of applicable laws relating to the performance of assessment work for the assessment year ending September 1, 1977.
>
> * * * such work was performed by General Nuclear as the owner of said claims and for the purpose of holding possession of said claims.
>
> * * * the value of the work or improvements upon said claims during said period is at least $100 per claim and accrues to the improvement of said claims.

Similar assessment affidavits were filed by Mr. Flanagan for the years 1973, 1974, 1975, and 1976 for the same approximate 20,300 claims.

The assessment work requirement for the year ending on September 1, 1977, for approximately 20,300 mining claims totals over $2 million. Mr. Flanagan filed sworn affidavits which attested to the fact that labor or improvements totaling over $2 million in value had been performed by General Nuclear on its claims. Did General Nuclear or Mr. Flanagan, acting on its behalf, perform the labor or improvement work required by law? The subcommittee finds that the evidence beyond any reasonable doubt demonstrates that the required assessment work was not performed.

At one point during his testimony, Mr. Flanagan was asked what General Nuclear's gross income was for the year from September 1, 1976 to August 31, 1977. Mr. Flanagan stated that he did not recall, but would supply that information for the record. Subsequently, Mr. Flanagan, through his counsel, advised the subcommittee that General Nuclear's gross revenue for the period September 1, 1976 to August 31, 1977 was $16,300.[10]

During his testimony, Mr. Flanagan asserted his fifth amendment rights and refused to give the value of the assessment work performed on General Nuclear's 20,300 claims for the 1977 assessment year. He also invoked the fifth amendment in declining to answer a question as to whether the required $100 worth of labor or improvements had been performed on any single claim.

Evidence of the assessment work done on the claims, or lack thereof, was, however, obtained (from Mr. Flanagan) by the subcommittee staff in response to the subpoena duces tecum calling for records and documents relating to General Nuclear's uranium lode mining claims. Mr. Flanagan advised the subcommittee staff that he was unable to produce any receipts, checks, records, or other evidence showing that General Nuclear had performed any assessment work on its 20,300 claims during the assessment year ending September 1, 1977. In fact, the only records Mr. Flanagan produced to support the annual assessment affidavits which he filed in each of the five years from 1973 through 1977 for these 20,300 claims were two written exploration agreements between General Nuclear and other companies.

One such agreement was a memorandum option executed in December 1975 with Exxon involving 27 Sky claims in Fremont County, Wyo.

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[9] Hearings, supra note 5, at 41.
[10] Ibid. at 34–35.

Exxon relinquished its option in September 1976. The second written agreement was a purchase option executed in September 1975 with Urania Exploration, Inc., involving approximately 1,050 Riner and NW claims in Sweetwater County, Wyo. Urania paid General Nuclear $7,000 in 1975 and $7,000 in 1976, for the right to drill on these claims and did not renew the option in 1977.

While the claims were under option to Urania, Mr. Flanagan continued to file affidavits of assessment stating that General Nuclear was performing the required assessment work. However, Mr. Flanagan never inquired nor did he receive any information from Urania regarding the number of exploratory holes drilled, an accounting of how much was spent or what work, if any, was performed by Urania on the claims. As he stated, his principal concern was to "protect myself"—a reference to the filing of paper in the courthouse as a deterrent to anyone else interested in relocating the claims.

In addition to these two documents, Mr. Flanagan recalled one other agreement entered into in October 1974 with Kerr-McGee involving a 90-day exploratory option on 766 Lone claims in Natrona County, Wyo., for which General Nuclear was paid $3,611, or approximately $5 per claim.

Thus, of the approximate 20,300 claims held by General Nuclear on September 1, 1977, only 1,843 claims had been the subject of exploratory agreements with other companies since 1973. Furthermore, with regard to those claims, Mr. Flanagan did not know or have documentation to show how many holes were drilled or what assessment work, if any, was performed on the claims.

While it can be speculated that some drilling was done by these other companies on a limited number of claims under the option agreements, General Nuclear itself has not performed or contracted for exploratory drilling on any of its claims since 1973.

In the absence of exploratory drilling, how was General Nuclear able to satisfy the $100 per claim assessment work requirement for approximately 20,300 claims? The subcommittee concludes that General Nuclear did not perform the required assessment work and Mr. Flanagan's affidavits attesting that it did are false. As Mr. Daniel M. Burke, the prosecuting attorney of Natrona County, Wyo., testified, the making of a false affidavit is a felony under Wyoming law.[11]

According to Mr. Flanagan, the value of the assessment work performed on General Nuclear's claims last year consisted of his own geologic time, which he stated was worth $100 per hour, plus an estimated $100,000 in out-of-pocket expenses consisting of filing fees, redrafting of maps, printing and promotion expenses, telephone calls, travel expenses, secretarial fees, and office rental.

By generously assuming that Mr. Flanagan spent half his time doing geologic work at $100 per hour, equating to $100,000 for the year, plus $100,000 in out-of-pocket expenses, it is obvious that General Nuclear's total 1977 assessment work expenditure of $200,000 was woefully short of the $2 million required by law. In addition, as previously pointed out, General Nuclear's gross revenue for the year prior to September 1, 1977, was only $16,300.

Furthermore, it is doubtful in an adverse claim action whether all of the alleged $200,000 could be substantiated or qualified as proper assessment work. Mr. Flanagan acknowledged that a portion

[11] Ibid. at 22. See also sec. 6–154.1 of the Wyoming statutes (1971).

of his assessment work consisted of geological or geophysical survey work. In 1958, Congress enacted a law which permits such work to qualify as labor assessment work, but only after it is verified by a detailed report filed in the county office in which the claim is located.[12] General Nuclear has failed to file any such reports in the seven Wyoming counties in which its 20,300 uranium lode mining claims are located.

The basic corporate goal of General Nuclear was not to explore and develop its vast claim holdings with its own resources, but rather to peddle or sell an exploratory option or interest in the claims to a major energy company. According to Mr. Flanagan, the modus operandi involved "making love with an oil company"—a euphemism used to describe the process of convincing an oil company's personnel of the geologic merit of certain claims and enticing them into purchasing an exploratory interest.

As consideration for granting an exploratory option or lease, General Nuclear obtains a small sum per claim of front money, often $5–$8 per claim, plus the promise of future royalties in the event a commercial ore body is discovered and mined.

In 1977, General Nuclear concluded two such agreements with major oil companies. These agreements are illustrative of the system existing today whereby public mineral lands are held illegally for speculative purposes—a system which is being condoned and encouraged by the nation's largest oil companies.

General Nuclear's most recent agreement consisted of a September 19, 1977, option agreement with Phillips Petroleum Co. (Phillips) for approximately 9,500 uranium lode mining claims located in Carbon, Natrona and Fremont Counties, Wyo. For an exploratory interest in those claims, Phillips paid General Nuclear approximately $70,000, or $7.50 per claim.

The transaction with Phillips clearly demonstrates how a major energy company is willing to look the other way while purchasing uranium claims which a reasonable inquiry would reveal to be illegally held. Mr. Flanagan filed assessment affidavits for the year ending September 1, 1977, attesting that General Nuclear had performed at least $100 per claim, or a total of $950,000 on the claims optioned to Phillips. Similar assessment affidavits had been filed for the previous 4 years.

Mr. Donald C. Laub, a senior geologist for Phillips in Wyoming, testified that when Phillips acquires mining properties from other companies a "courthouse check of the records" is made "to see if annual assessment work has been filed on the property."[13] In the General Nuclear transaction, Phillip's placed total reliance on Mr. Flanagan's assessment affidavits which were on file in the courthouses of those three counties. In so doing, Phillips chose to ignore myriad indicators which pointed directly to the falsity of Mr. Flanagan's affidavits.

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[12] Public Law 85-876, 72 Stat. 1701. The detailed report must contain the following information:
(a) the location of the work performed in relation to the point of discovery and boundaries of the claim,
(b) the nature, extent and cost thereof,
(c) the basic findings therefrom,
(d) the name, address, and professional background of the person or persons conducting the work.

[13] Hearings, supra note 5, at 183.

It is widely known in the mining industry today that many uranium lode mining claims are being possessed by individuals or companies without the annual assessment work being performed. Mr. MacGuire estimated that as many as 25 percent of all uranium claims in the United States are being held improperly.[14] Mr. Laub acknowledged that it was a good possibility that millions of acres of land are being tied up by the filing of false assessment affidavits.[15]

In the particular case involving General Nuclear, Phillips received only a handful of drilling logs and radon surveys as substantiation for the alleged $950,000 annual assessment expenditure of General Nuclear, which totaled approximately $4,750,000 over the five-year period in which Mr. Flanagan filed the affidavits. No other drilling logs or geologic studies were received by Phillips. Mr. Laub acknowledged that the absence of such documentation may have caused a suspicion of the filing of false affidavits to "pass my mind."

Mr. Laub further acknowledged that if General Nuclear had been doing the annual assessment work required by law, exploration and development of these claims should have been well along. However, no evidence of significant exploration or development was observed by Phillips.[16] In addition, a cursory background check would have revealed that General Nuclear, as a one-man operation, clearly did not have the financial wherewithal to satisfy the assessment work requirements for its claims.

As the following colloquy between Chairman Moss and Mr. Laub clearly demonstrates, Phillips was content simply to look the other way:

> Mr. Moss. I find it rather interesting that you rely upon the proof of assessment work as it is filed at the county courthouse, but you apparently make no serious attempt to determine whether a reasonable man would conclude that the work had in fact been performed. Is that a fair characterization of the extent of inquiry you initiate?
>
> Mr. Laub. I guess that would be a fair statement.

By looking the other way while purchasing claims being illegally held, Phillips has condoned and encouraged the speculative holding of public mineral lands in violation of the spirit and intent of the Federal Mining Act.

The second agreement General Nuclear executed with a major oil company in 1977 involved Exxon Co., U.S.A. On March 18, 1977, Exxon entered into a lease and purchase option agreement with General Nuclear for approximately 225 Casper claims located on the Burke Ranch in Natrona County, Wyo. These claims were part of a larger group of claims located in the area by General Nuclear in the spring of 1970.

According to Mr. Omer R. Humble, chief landman of Exxon' minerals department, the extent of Exxon's normal inquiry, when acquiring uranium claims, is a check of the recorded documents including annual assessment affidavits on file in the county courthouse. However, Mr. Humble testified that upon receipt of information

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[14] Ibid. at 19.
[15] Ibid. at 183.
[16] Ibid. at 186.

indicating that the claims in question might be improper, then it was Exxon's policy to make additional inquiries.[17]

In this case, Exxon received information questioning the validity of the claims directly from the owner of the ranch, Mr. Dan Burke, who informed Exxon that "* * * there had not been physical staking of that property nor had there been any assessment work or validation work on those properties so the claims were not * * * valid."[18]

Exxon's policy notwithstanding, the evidence suggests that Exxon acquired the Casper claims without any serious attempt to determine whether the annual assessment work had actually been performed by General Nuclear. While Mr. Flanagan asserted his fifth amendment rights in refusing to answer questions concerning the Exxon transaction at the hearing, he had previously stated to the subcommittee staff that Exxon's representatives "just showed up at my office" and we "made the deal in five minutes." According to Mr. Flanagan, Exxon did not ask about prior drilling, geologic data, or other assessment work. Mr. Flanagan provided them with nothing other than a map and referred to the front money of $6,300 he received from Exxon as being "like money from home." Mr. Flanagan also indicated that General Nuclear had not done any onsite work on the Casper claims.[19]

Exxon's request for a description of General Nuclear's assessment work, which resulted in Mr. Flanagan's letter of May 20, 1977,[20] appears to be nothing more than a cosmetic and belated effort to demonstrate concern regarding assessment work. According to Mr. Flanagan, the letter was requested after Exxon leased the claims from General Nuclear.[21]

Major energy companies, such as Phillips and Exxon, by providing a ready market for those who are illegally holding public domain lands for speculative purposes, are condoning and encouraging abuses of the mining law. There appear to be several reasons for their willingness to do so.

First, it is much cheaper for a major energy company to obtain an exploratory interest in this manner as the following exchange between Chairman Moss and Mr. Laub illustrates:

> Mr. Moss. It is a good way to get a packaging of a bunch of claims. And you probably know in your heart that they didn't do the work, and that they probably haven't got them staked, and that if anyone really wanted to overstake, it would be almost unchallengeable in a court.
>
> But it's a convenient way for you. It costs you a lot less to pay the $7.50 for the option and have access to the land and be able to explore and develop and then finally make a deal if there is something to deal over than it would if you had to go out and stake the 9,500 claims. Isn't that true?
>
> Mr. LAUB. That is true.

Second, a major oil company which obtains an interest in false claims encounters almost no risk of losing the claims to another company through the overstaking process. In the mining industry today, there exists an unwritten code whereby the major energy companies are not overstaking other valuable claims. With a few notable exceptions, such as the overstaking activity of Mr. MacGuire's Natrona Service, Inc., the prevailing attitude is one of "live and let live." Exxon has

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[17] Ibid. at 233–234.
[18] Ibid. at 25.
[19] Staff interview, September 17, 1977.
[20] Hearings, supra note 5, at 227.
[21] Staff interview, September 17, 1977.

not overstaked or been overstaked by another major energy company in the past 5 years, and Mr. Laub of Phillips stated that he would never consider overstaking as a possible remedy to acquire illegally or improperly held claims. The "delay and the chance of litigation" as well as the burden of proof imposed on the junior locator were cited as drawbacks to overstaking ventures.

VI. Fremont Energy Corporation—Washington Public Power Supply System

The discovery and development of new uranium reserves in this country is a key factor in the solution of our energy problems. Several of the nation's largest utilities are relying on nuclear power to meet future energy requirements. One such utility is the Washington Public Power Supply System (WPPS), a municipal corporation that generates and sells electric power to 115 participating utilities in the Pacific Northwest.

WPPS has five nuclear power plants under construction with the first scheduled to begin commercial operation in late 1979. To provide a reliable supply of fuel for these plants, Mr. Edwin F. Alden, staff attorney for WPPS, testified that WPPS "decided to embark on a program leading to the ownership and mining of uranium deposits by the Supply System itself." [22] Several factors dictated WPPS' decision not to rely solely upon the market for the acquisition of yellowcake.

The dramatic increase in uranium prices—from $5 a pound in 1972 to over $40 a pound in a few short years—was a significant factor. Mr. Alden cited estimates which indicate that by the late 1980's, when WPPS will be fueling its fifth reactor, the price of uranium will approach $110 per pound.

The second principal factor cited by WPPS was its realization that "firm contracts for uranium by no means guaranteed a supply of uranium." [23] Mr. Alden cited the well known Westinghouse case as well as litigation pending between WPPS and Homestake Mining Co. Both cases involve a uranium supplier's refusal to deliver uranium pursuant to contracts which provide for a lower price than the prevailing price at the time of delivery.

Once the decision was made to venture into the uranium exploration and extraction field, WPPS management further decided to acquire mining rights only to "lands were extensive geologic work already had been done, and that work showed the presence of U_3O_8." [24]

While commending WPPS's initiative in venturing into the uranium supply market, in the interest of long-term supply protection for its customers, the serious risks encountered and assumed by a municipal utility using public bond money and lacking both experience and expertise of its own in the mining field are of deep concern to the subcommittee. Of particular interest are the pitfalls facing WPPS's entry into the uranium business as they relate to the Federal mining laws and the acquisition of public mineral lands.

On March 14, 1977, WPPS entered into an agreement with Fremont Energy Corp. of Denver, Colo., for the mineral rights to 18,000

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[22] Hearings, supra note 5, at 193.
[23] Id.
[24] Id.

uranium claims in the Red Desert of Wyoming. These 18,000 claims represent one of the largest contiguous uranium claim areas in the United States (365,000 acres or 570 square miles).

The agreement between WPPS and Fremont Energy Corp. calls for WPPS to provide $1.5 million to Fremont over a 2-year period, of which all but $120,000 will be used for exploration purposes. The $120,000 sum is compensation for Fremont's management services over the 2-year period. Upon expenditure of that money, WPPS will be entitled to exercise its option to acquire Fremont's Red Desert claims. Should WPPS exercise that option, Fremont would be entitled to a $1 per pound discovery bonus on 50 percent of the indicated ore reserves acquired by WPPS. In the event of production, Fremont would be entitled to a 10 percent in-kind royalty interest on U_3O_8 concentrate—yellowcake—and all other minerals to increase to 30 percent 3 years after initial production.

The $1.5 million in exploration money to be supplied by WPPS was raised by a $145 million March 1977 public bond offering of which $45 million was earmarked for the acquisition and exploration of uranium-bearing lands.

Staff testimony at the hearings,[25] which was based on documents obtained by subcommittee subpoenas and interviews, described the manner in which Fremont acquired the mineral rights to the 18,000 Red Desert claims. In 1976, Fremont issued 600,000 shares of stock to Silvertip Exploration Co. for approximately 5,500 uranium lode mining claims in the Red Desert, plus some other claims and royalties. The sole stockholder of Silvertip was William J. Murphy, the president of Fremont. In 1976, Fremont obtained from Ralph L. Schauss, chairman of Fremont's board of directors, approximately 9,200 uranium load mining claims in the Red Desert, contiguous to those obtained from Mr. Murphy, for $150,000—$30,000 in cash and the balance in Fremont stock.

Prior to their being acquired by Mr. Murphy's Silvertip Exploration Co. for sale to Fremont, the 5,500 claims were held by companies closely associated with Messrs. Schauss and Murphy, including Petro-Nuclear Ltd., of which Mr. Murphy was president and Mr. Schauss was secretary, and Nuclear Reserves, Inc.

As far as can be determined, all of the claims ultimately acquired by Fremont, and subject to the agreement with WPPS, were located during the period 1968–70 by Mr. Schauss and Mr. Murphy and an associate, Col. Eugene Stevens. With some exception, the actual staking of the claims was done by Mr. Elmer L. Gibson, who worked for Mr. Schauss.

Apart from the approximately 14,700 claims which Fremont obtained from Mr. Schauss and from Mr. Murphy's Silvertip Exploration Co., an additional 3,900 claims were involved in the WPPS transaction. These involve claims that were held by Pollution Control and Engineering Corp., whose name was changed to Fremont Energy Corp. in November 1976.

WPPS's vulnerability concerning possible defects in the title to the claims optioned to it by Fremont was twofold: (a) the claims were not located and validated in accordance with Federal and State mining laws, and (b) the required $100 per claim annual assessment work was not performed.

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[25] Ibid, at 46–47.

(A) LOCATION AND VALIDATION WORK—FREMONT'S RED DESERT CLAIMS

As previously noted, the Federal Mining Act requires that the location of the claim must be distinctly marked on the ground so that its boundaries can be readily traced. In addition, the mining laws of Wyoming require that the surface boundaries of a claim must be marked by "six substantial monuments of stone or posts," one at each corner and one at the center of each side line. Further, that each claim shall have posted on the discovery monument a notice containing the name of the claim and locator, and the date of discovery. In addition, Wyoming law requires certain discovery, or validation, work which generally consists of the drilling of five 10-foot holes.

Evidence and testimony presented at the hearings disclosed that the 18,000 Red Desert claims involved in the WPPS-Fremont agreement were not located and validated in accordance with Federal and State mining laws.

Mr. Elmer L. Gibson testified that he was employed by Ralph Schauss from 1968 to 1971 for the purpose of staking the Red Desert claims.[26] He stated that he and a crew under his supervision staked the claims by "walking them off," as opposed to using an exact measurement, and that he actually put in the ground only the discovery monument and two corner stakes and did not put in the other two corner stakes and the two side-center stakes required by Wyoming law. Mr. Gibson stated he knew at the time he staked the claims that they were not done in accordance with State requirements and brought this to Mr. Schauss' attention. He said that Schauss told him not to worry about the additional stakes, that he could do those later, but they were never done. He said that Schauss instructed him to put the wood in the ground (discovery monument and two corner stakes) as quickly and as cheaply as possible in order to beat out the major oil companies who were interested in the area.

With regard to the validation drilling required by Wyoming mining laws (a total of 50 feet which is usually done by drilling five 10-foot holes near the discovery monument), Mr. Gibson testified that at the instruction of Mr. Schauss he only did a little validation drilling on the claims that were around the roads. The purpose of this was to make it apparent to anyone driving through the Red Desert area that validation work had been performed. Mr. Gibson stated that, in fact, only 4 or 5 percent of the 18,000 claims had any validation drilling done on them and that 95 percent of the claims had no validation work as required by State law.

Mr. Gibson also testified that subsequent to his work in the Red Desert he located some 20,000 uranium lode mining claims for Mr. Schauss in Utah and Colorado. He stated that these claims were staked and validated in the same manner as the Red Desert claims, i.e., the staking was incomplete and the only validation drilling performed was done on those claims located near roads through the areas.

Mr. Gibson stated that he signed, as locator, all of the location certificates for the Red Desert claims and then executed, at Mr. Schauss' direction, quit claim deeds for all the claims and deeded them back to Schauss. Schauss then filed the location certificates at the appropriate county courthouses.

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[26] Ibid. at 107–128.

Mr. Gibson further stated that he signed, at Mr. Schauss' instruction, assessment affidavits or proofs of labor in 1972 for some 14,000 uranium claims which Schauss filed with the county clerks in Sweetwater, Carbon, and Campbell Counties, Wyo. These proofs of labor purport to show that the required annual assessment work of not less than $100 per claim was being done.

One such proof of labor, dated August 24, 1972, and signed by Mr. Gibson "of Western Exploration Co." was introduced into the record.[27] This document related to annual assessment work being performed on 3,412 Red Desert claims in Sweetwater County, which would mean a minimum of $341,200 work during the preceding year. Mr. Gibson stated that he signed this document at Mr. Schauss' direction, but that he had never heard of "Western Exploration Co." He stated that the only assessment work he performed on those 3,412 claims was approximately 2,000 feet of drilling, which he estimated did not exceed $3,000—or less than 1 percent of the amount of work required by the mining laws. He advised that Mr. Schauss told him to go out and drill around where he could be seen by anyone coming through the Red Desert area. He said he performed this drilling during the summer of 1972, on claims near the roads only.

Mr. Gibson testified that shortly after he signed these proofs of labor for Mr. Schauss in 1972, he had misgivings because he knew the assessment work had not, in fact, been done. He went to an attorney in Casper, Wyo., and executed an affidavit on December 14, 1972, stating that he had not performed the assessment work on approximately 14,000 uranium lode mining claims in Sweetwater, Carbon and Campbell Counties, Wyo., as he stated he had done in three proofs of labor that he had signed for Mr. Schauss.

Mr. Gibson stated that during the years he was staking the Red Desert claims, Mr. Schauss visited the locations and saw the manner in which the claims were being staked. At no time did Schauss tell Gibson that the staking was improper and, in fact, he told Gibson on several occasions that he was doing a good job. Thus, Mr. Schauss not only knew the claims were improperly staked, he commended the locator for the job he was doing. Gibson advised that not one claim he staked for Schauss in the Red Desert was legal. He said he visited the Red Desert claims in subsequent years and knew from personal observation that no one had ever come back to properly stake the claims or to do the required amount of validation drilling.

(B) ASSESSMENT WORK—FREMONT'S RED DESERT CLAIMS

A further cloud on the title of the claims optioned by Fremont to WPPS was the failure of Fremont or its predecessors to perform annual labor or improvements (assessment work) as required by law. Evidence addressed at the subcommittee hearings revealed that the performance of assessment work on the claims optioned to WPPS had been grossly deficient.

Approximately 9,200 of the claims in the Fremont-WPPS deal had been held since their location by Mr. Schauss and his associate, Mr. Eugene Stevens. Mr. Schauss was responsible for the field operations while Mr. Stevens indicated that he had never been to the Red Desert claims.

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[27] Ibid. at 115–116.

Beginning in 1970 and continuing until the sale to Fremont in 1976, Mr. Schauss filed, or caused to be filed, annually proofs of labor (affidavits of assessment) for approximately 7,200 of the claims.[28] Thus, at $100 per claim, approximately $720,000 of annual labor or improvements should have been expended on these claims each year.

At the subcommittee hearings, Mr. Schauss admitted that he had failed to perform $100 of assessment work per claim. Indeed, the evidence shows that Mr. Schauss, or persons acting on his behalf, performed only a small fraction of the assessment work required by the Federal Mining Act.

In response to a subpoena duces tecum served on Mr. Schauss calling for the production of all documents and records relating to the assessment work performed on these uranium lode mining claims, Mr. Schauss was able to produce only a limited number of cancelled checks. No other records or proof of assessment expenditure performed on these claims were produced.

Since few of the cancelled checks could be directly identified with the Red Desert claims and many were for projects in other States, Mr. Schauss, upon request, estimated that $40,000–$50,000 was spent on these claims each year. He confirmed the correctness of this estimate at the hearings.[29] Thus, accepting Mr. Schauss' estimate, a yearly average of only $7 per claim was expended for assessment work rather than the required $100.

Furthermore, there is evidence in the record which suggests that even Mr. Schauss' estimate is inflated. Mr. Stevens, as part owner, was accountable for one-half of the assessment expenditures on the claims. For the 4-year period, 1971–74, Mr. Schauss, in billings to Mr. Stevens, shows a total expenditure on the claims averaging just below $6,000 per year, or less than $1 per claim.[30]

Not only did the assessment work performed fall far short of meeting the requirements of the mining law, the evidence suggests that Mr. Schauss caused documents to be filed in the county courthouses which tended to obscure the fact that the assessment work of $100 per claim was not being done.

A typical proof of labor filed or caused to be filed by Mr. Schauss for his claims reads in part as follows:

> * * * Ralph L. Schauss of Western Exploration Co., who, being duly sworn, says that assessment work on the following named unpatented lode mining claims has been done for the current year or has been started in part or is now in the process of being done by said Western Exploration Company, and is projected to continue until such time as may be required to complete such work.

It is evident that an attempt was made to draft the affidavits in such an ambiguous manner so as to prevent another miner from determining whether the required $100 of assessment work per claim had been performed for the year in question. Such a determination is crucial to those who may be interested in relocating the claims. Furthermore, under Wyoming law, the affidavits are to be filed for record "upon *completion* of the required assessment work for any mining claim. (Emphasis added.)

Further compounding the deception was the use of various companies' names in the affidavits to make it appear that mining companies

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[28] Ibid. at 52.
[29] Ibid. at 65.
[30] Ibid, at 65–74.

had been hired to perform the annual assessment work. The affidavits identified these companies as Poison Spider Mining Co., Whiskey Gap Mining Co., Crazy Woman Creek Mining Co., and Western Exploration Co.

In further response to the subpoena duces tecum calling for the production of all records relating to the assessment work performed on the Red Desert claims, Mr. William Murphy, president of Fremont Energy Corp., furnished an affidavit dated September 19, 1977, containing Mr. Murphy's "estimates" of the labor and materials which constituted the assessment work done on the 18,000 Red Desert claims during 1970–77.[31] Mr. Murphy's estimate of approximately $3 million expended in assessment work on these claims during this 7-year period is not only erroneously high, it falls far short of the $12.6 million that should have been spent in assessment work during this period in accordance with the law.

Mr. Murphy estimates that of the $3 million he says was spent on the Red Desert claims, a total of $1.3 million was expended in exploration work by three major oil companies—Union, Mobil, and Getty. Mr. Murphy estimated that Union spent $500,000 drilling in the Red Desert; however, Union advised that it spent only $165,781 for drilling and logging 126 holes, or only one-third of Murphy's estimate.

Mr. Murphy estimated that Getty spent $450,000 drilling in the Red Desert; however, Getty advised that it spent only $63,975 for drilling and logging 59 holes, or only one-seventh of Murphy's estimate.

Mr. Murphy estimated that Mobil spent $350,000 drilling in the Red Desert; however, Mobil advised that it spent only $21,763 for drilling and logging 20 holes, or only one-sixteenth of Murphy's estimate.

Thus, instead of Murphy's "estimate" of $1.3 million expended by these three companies in exploration work, they actually spent only $251,519, or $1,048,481 less than Murphy's estimate.

When confronted with the oil companies' figures, as contrasted with his own, at the hearings, Mr. Murphy was most adamant in supporting his own estimates. With regard to Mobil's figure of $21,763 and his own estimate of $350,000, Murphy testified as follows:

> Mr. Murphy. Obviously, under option agreement I had no direct access to Mobil Oil's financial or accounting processes to provide this figure. However, all of the geological records were turned over to me * * * We know in the industry what it costs to generate a foot of drilled hole and geologically evaluate it. That currently is in the range of $6 per foot. (Hearings, pg. 152)
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> Mr. Murphy. * * * I would suggest that probably whoever prepared this document really has missed his total accounting—these are the figures which have been presented by almost all segments of the industry and these would suggest a significantly higher number. I doubt that Mobil was that much more efficient than the rest of us. (Hearings, pg. 157)

With regard to Getty's figure of $63,975 and his own estimate of $450,000, Murphy testified:

> Mr. Murphy. * * * I think that a full cost accounting of their cost of exploration and with their overhead properly calculated, will show a number much closer to what I have presented than these documents would indicate. (Hearings, pg. 163)

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[31] Ibid, at 148–150.

And with regard to Union's figure of $165,781 and his own estimate of $500,000, the following exchange took place:

STAFF. Can you imagine why any of these three large oil companies would want to lie to us about this?

Mr. MURPHY. They are not lying. It is merely a mistake. The information is coming from the wrong man who is not aware of the total cost of his exploration efforts. (Hearings, pg. 171)

At the direction of the chairman, the subcommittee staff recontacted Union, Getty, and Mobil requesting that they double-check their figures in light of Mr. Murphy's insistence that his estimates were more accurate than their figures.

Union Oil Co. confirmed its figure of $165,781, noting the cost of drilling and logging amounted to $2.79 per foot, not the $6 figure used by Murphy. Union further stated:

With respect to Mr. Murphy's statement (in his affidavit of 9/19/77) "Neither Fremont nor I am in possession of the acounting data which comprise this figure * * *", under the Agreement of May 9, 1969 between Petro-Nuclear, Ltd., and (Union), Petro-Nuclear had the right of audit. Audits of our books were made in our Los Angeles offices personally by Mr. Murphy and his attorney, Thomas J. Constantine, on October 27, 28 and 29, 1970; June 2, 1971; and July 6, 7 and 8, 1972. (Hearings, pp. 170–171)

Getty confirmed its figure of $63,975, noting that the company could not have justified any amount over $1.50 per foot at the maximum, not the $6 figure used by Murphy. (Hearings, p. 164)

Mobil confirmed its figure of $21,763 (or $1.09 per foot) and made these pertinent observations: "The figures as submitted are correct * * * Our costs are factual. Mr. Murphy's ability to estimate seems to be poor." (Hearings, pp. 157–158)

As previously mentioned, WPPS's vulnerability concerning possible defects in the title to the claims optioned to it by Fremont was twofold: (a) the claims were not located and validated in accordance with Federal and State mining laws, and (b) the required $100 per claim annual assessment work was not performed. Was WPPS aware of those pitfalls before entering into the agreement with Fremont? The evidence clearly establishes that WPPS not only was aware of its vulnerability, it chose to proceed with the venture despite strong "red-flag" warnings that the claims had not been located and maintained in accordance with the law.

By letter dated July 27, 1976, to WPPS, Mr. Murphy of Fremont outlined a proposed joint venture 2-year exploration program involving the 18,604 Red Desert claims.[32] WPPS and Fremont conducted negotiations over the next several months. On November 23, 1976, WPPS telephonically instructed the S. M. Stoller Corp., a fuels consulting firm, to initiate an evaluation of the Red Desert uranium exploration project with Fremont. WPPS requested Stoller's report by December 3, 1976. Stoller furnished the report by December 3rd, noting that WPPS's schedule requirements were "difficult to say the least." Stoller noted that WPPS had reviewed some 27 exploration proposals and that WPPS considered the Fremont offer as the best within its criteria of avoiding "grass roots" exploration. Stoller emphasized the following in its report to WPPS.[33]

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[32] Ibid. at 263–264.
[33] Ibid. at 265–273.

I must stress that all of our opinions, as stated above as well as those in Attachment 2, are necessarily cursory. The magnitude of the work far outstripped the time available for our review and, accordingly, we do not feel that this review is sufficient to either strongly advocate or condemn this offering.

An interesting colloquy transpired at the hearings between subcommittee counsel and Mr. Edwin F. Alden, attorney for WPPS, concerning the necessity for Stoller to complete its evaluation of the proposed Red Desert venture in a space of 10 days. In view of the fact that WPPS was looking to long-term downstream uranium supplies and had never been involved in the uranium business before, the logical question was: what was the hurry? Mr. Alden indicated that if WPPS were to enter into this agreement, it wanted to do so in time for the 1977 drilling season. He also stated that Fremont had indicated that WPPS had better move quickly since, if it appeared that WPPS was not going to go through with the deal, Fremont would be forced by their own financial situation to look elsewhere.[34]

In other words, Fremont was putting pressure on WPPS to reach a decision quickly. Logically, at this point, WPPS should have asked itself why Fremont was so anxious to move quickly. After all, if the Red Desert claims were actually as hot a prospecting venture as Fremont purported them to be, then major companies should have been knocking Fremont's door down to get at them—with the price of uranium at $40 a pound and projected to climb to over $100 per pound within a few years. Apparently WPPS never asked itself this pertinent question: Why are we Fremont's only prospective partner?

In any event, WPPS, motivated by the fact that it would not have to put up any front-end money in the venture, moved ahead. WPPS required Fremont to supply a title opinion on the claims. The title opinion, which was completed by a Wyoming lawyer on January 20, 1977, validated ownership of the claims by Fremont. The lawyer cautioned, however:

The county records contain proper affidavits that the required annual assessment work has been performed on the claims. In this opinion, I have relied upon the recitals contained in the location certificates and affidavits of assessment work.

Requirement: Satisfy yourself by actual field examination of the affected lands and of the evidence of discovery and performance of assessment work that the recitals contained in the cited instruments are correct.[35]

First, the "recitals" contained in the assessment affidavits do not state unequivocally that the work "has been performed." Rather, as noted previously, they are instruments of deception—thought to be cleverly designed to circumvent the law. Second, WPPS did not heed the title lawyer's cautionary statement to satisfy itself with regard to the performance of assessment work.

On February 7, 1977, Mr. Alden and a WPPS geologist drove to the Red Desert area to examine the claims. Subsequently, they reported that the claims appeared to be valid "in most cases or most instances." Mr. Alden testified that the tendency was to stake down section lines "so you can literally drive 20 or 30 miles an hour down a section line and watch claims stakes go by like picket fences in some cases." [36]

In March 1977, John MacGuire and his foreman flew over the Red Desert claims owned by Fremont in MacGuire's private plane at extremely low altitude and at very slow speed. They found almost no

[34] Ibid. at 198–199.
[35] Ibid, at 293–295.
[36] Ibid, at 204–205.

evidence of staking. A subcommittee staff investigator spent a day driving Fremont's Red Desert claims in early September 1977, and found less than 10 stakes.

On February 9, 1977, over a month before WPPS entered into the agreement with Fremont, Mr. Alden met with Mr. Houston Williams, a Casper attorney, and his law partner, Mr. George Porter, and retained them to, among other things, investigate Fremont's reputation in the mining community. Mr. Alden testified that Mr. Williams raised substantial doubts about WPPS going ahead with the agreement and indicated that there were severe risks in the venture.[37]

By letter dated February 16, 1977, Mr. Porter furnished an opinion to Mr. Alden concerning the proposed consulting agreement and option agreement with Fremont, and also made these pertinent observations:[38]

> Referring to the mining deed itself * * * Fremont warrants only that the lode mining claims were located in accordance with the applicable provisions of Federal and State law and that it warrants and defends that title "*specially* against all persons claiming by, through or under Fremont." Nowhere do we find that Fremont will defend or make good its title against other adverse claimants, particularly others who may have attempted to overstake or otherwise claim the same lands adversely to Fremont.
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> The matters appearing in the public records examined by the attorney who prepared the title opinion handed to you and which you left with us, is the bare "tip of the iceberg" insofar as such titles are concerned. The notices of location which are recorded, together with the affidavit of discovery and the affidavits of continuing and annual assessment work are meaningless and worthless unless all of the physical matters required by law have been complied with. The boundaries of the claims must actually be marked, the discovery monument must be placed and drill holes or discovery shaft must all have been placed and accomplished in strict accordance with the applicable State and Federal mining laws. If these matters are deficient in any respect, no right is acquired by the claimant, other than a right of possession (pedis possessio) which may be usurped or destroyed by another who first complies with the statutory requirements. Once these matters have been accomplished, there is the additional duty to perform not less than $100 worth of work toward discovery and production of ore for each claim during each fiscal year starting September 1. Courts have recognized certain activities as complying with this requirement, such as the construction of access roads, the drilling of shafts and equivalent activities which lead to the actual discovery and eventual mining of minerals. To our knowledge, no court has yet approved airborne or magnetometer searches, photometry or radiometrics or other methods which serve only to indicate the possible presence of ore but which do not go toward the actual discovery and production of ore in commercial quantities. Therefore, despite all of the matters which may appear of record, only actual inspection on the ground to determine that boundary markers and the discovery monument are actually in place and properly marked, that the discovery shaft has been dug or the permitted drill holes have actually been drilled to the required depth and that actual roads have been constructed or other activities accomplished which verify the discovery of ore and lead to its early production, will satisfy the annual assessment requirements. Anything less than this may result in overstaking and valid rights of possession in an adverse third party. It is for these reasons that we feel that Fremont should specifically agree to maintain all of its claims and specifically to defend them against all persons who may assert an adverse claim. Otherwise, you may be purchasing nothing.

On March 14, 1977, WPPS entered into an agreement with Fremont for the mineral rights to the 18,000 Red Desert uranium claims. Despite Mr. Porter's admonitions, WPPS did not require Fremont to agree to defend its claims against all persons who might assert an adverse claim.

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[37] Ibid, at 202.
[38] Ibid, at 275–282.

By letter dated March 21, 1977, Mr. Williams advised Mr. Alden, in part, as follows: [39]

At our meeting (February 9), you advised us that WPPS was contemplating entering into agreements with Fremont Energy Corporation which involved certain lode mining claims in the Red Desert Area of Wyoming. At that time one of my partners, Mr. Porter, and I expressed to you our concern about the validity of these mining claims, which we understand to be some 18,000 in number. You advised us that you had been told that these claims were initially located in 1967 and that you had further been told that the necessary assessment work had been done on each of the claims, comprising $100 for each claim since that time. This would require the expenditure of $1,800,000 per year commencing with the first full year after the claims were located. It was my belief at the time that the likelihood that Fremont Energy had made such expenditures was indeed remote and I had serious doubts whether it had been done.

At that time I also reviewed with you, briefly, the lawsuit in the United States District Court for the District of Wyoming in which Continental Oil Company, our client, was plaintiff, and Natrona Service, Inc. and John MacGuire were defendants. This case was tried over a period of two weeks and resulted in a judgment in favor of the defendants as to a large number of the lode mining claims which had originally been staked by Continental and had been overstaked by MacGuire. The reason for this was that the jury found that Continental's staking contractors had not properly validated the claims under Wyoming law (that is, by the drilling of fifty feet of hole on each claim with no hole less than ten feet in depth). My experience in this case indicates that anyone interested in the acquisition of an interest in lode mining claims in the State of Wyoming must be assured that the mining claims were properly located and validated with the necessary recording in the county involved . . . The second concern is that proper assessment work has been done each year, failing which the claims are open to location by other parties.

Our advice to you at that time, and Mr. Porter's letter reiterated it, that in order to evaluate Fremont Energy's title to these claims, we must be assured that the physical work was properly done and that the paper work in the county was in order, with emphasis on the physical work actually done.

* * * * * * *

I also advised you that so long as Mr. MacGuire was in the business, we might well expect him to be the one to challenge lode claims. As a matter of fact, his concern goes beyond the mere overstaking of these claims and he is definitely interested in involving public authorities in this matter, both politically and from a criminal prosecution standpoint.

* * * * * * *

* * * I might add at this point that my guess is that the Conoco claims were in much better shape than we are going to find the claims of Fremont Energy * * * The quickest and easiest way to test the validity of these (Fremont's) claims, in my opinion, would be for you, as the company's attorney, to require solid and unequivocal evidence that Fremont Energy has expended $1,800,000 each year by way of assessment work on these claims. If you do not find this to be the fact, then I can give you my opinion in short order. It will be that as to any claim upon which assessment work has not been done each year, a prima facie case of abandonment is shown and the claims must be promptly relocated from the beginning in order to maintain the title. You may expend a lot of time, money and effort examining location certificates, assessment affidavits, as well as a physical inspection (which you advised me you had made while you were in Wyoming which, needless to say, raised some doubts in your mind), and still not reach the basic title question which we have raised."

Mr. Williams also pointed out in his letter that sometime after his February 9th meeting with Mr. Alden, another out-of-state corporation engaged his firm and accepted his recommendation that a physical inspection be made of some claims in which they were interested. Mr. Williams approved Mr. MacGuire to make the inspection on behalf of his client since, to Mr. Williams' knowledge, Mr. MacGuire was the

[39] Ibid. at 284–288.

only one equipped to conduct such an inspection. When Mr. Williams contacted Mr. MacGuire concerning this, Mr. MacGuire mentioned that he had read a media story regarding the WPPS-Fremont deal, that he checked the records on these claims in the county and had done some other investigating, and was convinced that the claims were invalid. MacGuire offered to exhibit to Williams his evidence if any client was interested. Williams conveyed this offer to Alden and he advised that WPPS did not want to do this.

Questioned about this at the hearing, Mr. Alden stated that WPPS had gotten the impression from Mr. Williams that Mr. MacGuire was out to "get" Fremont and therefore, WPPS wanted no part of MacGuire. Mr. Alden also received the mistaken impression that MacGuire wanted to restake the entire Red Desert claims for WPPS. This is not correct. Mr. MacGuire simply wanted to overstake selected claims and do exploratory drilling on those claims to demonstrate to WPPS that the uranium potential of the area was not anywhere near as attractive as Fremont was depicting it.

Mr. Alden's reaction to Mr. Williams' letter of March 21, 1977, was interesting. In a memorandum dated March 24, 1977, Mr. Alden noted that Mr. Williams' letter did not contain any "new information" and commented that the letter should probably be very limited in distribution. In a second memorandum dated April 5, 1977, Mr. Alden discussed Wyoming law with regard to assessment work and noted that Mr. Williams was of the belief that WPPS should deal with major oil companies. Mr. Alden further commented: [40]

> The nature of the assessment work performed by Fremont Energy Corporation does not lend itself to verification by investigation of the premises. The Proof of Labor, in pertinent part, recites that the assessment work has been done by surface surveys, surface geological, geophysical or other examination or surveying of the surface formations by geological comparison or otherwise, photographic work—black and white, color, infrared or other type of film on out crops, etc. This type of assessment work was found not to satisfy assessment work in the case of *Lewis* v. *Carr*, 49 NEV. 366, 246 PAC. 695 (1926). However, a recent federal statute has provided that assessment work may be satisfied by geological, geochemical and geophysical surveys conducted by "qualified experts" and verified by a detailed report filed in the county office in which the claim is located . . . 30 USC 28 (1958). In light of the current federal statute and the age of the cited case, it would be difficult to categorically state the assessment work was improper.

It seems incredible that after citing the 1958 Federal statute, Mr. Alden made no attempt to check the Wyoming county records where the Red Desert claims are filed to determine whether or not Fremont had filed the "detailed report" called for in the statute with regard to its alleged surface geological and geophysical assessment work. Had Alden bothered to do so, he would have found that no such reports were ever filed by Fremont.

Thus, despite serious doubts and strong admonitions expressed by its Wyoming counsel as to the validity of the claims and the performance of the assessment work alleged, and an offer from Mr. MacGuire to prove the invalidity of the claims, WPPS chose to disregard this information and to do business with Fremont. In the view of this Subcommitte, that is questionable management by a municipally-owned corporation which is utilizing public bond money.

Had WPPS exercised a modicum of curiosity concerning the background of the Red Desert claims, it would have been aware that three

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[40] Ibid. at 289–291.

major oil companies—Union, Getty, and Mobil—each entered into exploratory option agreements with Mr. Murphy's company and during 1969–70 drilled a total of 205 holes on portions of the Red Desert claims Upon completion of the drilling program, each of the companies relinquished its interest in the claims, indicating that they did not consider the area commerically producible. That was at a time when uranium was selling for less than $5 per pound. It stands to reason that when the price rose to over $40 per pound, those three companies would have recontacted Murphy to enter into new lease agreements, if, in fact, they considered the area commerically feasible to produce. The fact that the three companies did not do further business with Murphy indicates the nature of the uranium potential of the Red Desert claims in the opinion of three companies with considerably more expertise in uranium discovery and production than WPPS had.

Another point is that had Murphy and Schauss performed the required $10 million in assessment work required on the 1,800 Red Desert claims they held from 1970 to 1976, when they began negotiations with WPPS, the exploratory effort doubtlessly would have determined the true uranium potential of the Red Desert. WPPS would not have had to use its money, as it is doing now, to determine the uranium potential of the area if Murphy and Schauss had abided by the law and performed the necessary assessment work over the years.

Finally, Mr. Alden testified that WPPS knew that Fremont had not done the $100 per claim assessment work annually as required by law.[41] He stated he was also aware that Fremont's proof of labor affidavits all put the assessment work into the present or future tense, whereas the statute clearly puts the requirement into the past tense. Yet, despite this knowledge, Mr. Alden testified that WPPS " * * * retained Wyoming counsel to * * * investigate Fremont's reputation in the mining community * * * This investigation disclosed nothing adverse about either Fremont or its management." [42]

The failure of Murphy, Schauss and Fremont to perform assessment work on these 18,000 Red Deserts claims from 1970 through 1976 effectively tied-up the lands and delayed the discovery development of new uranium reserve potentials.

One additional point should be made with regard to the Red Desert claims since it reflects on the character of Mr. Schauss. In the fall of 1970, Mr. Schauss hired Specialized Drilling Service of Casper, Wyo., to drill some 69 holes, approximately one mile apart on the Red Desert claims that he owned. Mr. Gibson, who was employed by Schauss and living in a trailer in the Red Desert at the time, observed this drilling activity and learned from the crew that only one hole showed any evidence of uranium. Shortly after Specialized Drilling completed its drilling on the claims, Mr. Gibson testified that Mr. Schauss came to Gibson's trailer, located on the SL claims in the Red Desert, and gave him a handdrawn map [43] showing the location of four of the holes which Specialized Drilling had drilled. Gibson advised that Schauss gave him directions on how to "salt" these drill holes to make it appear that there was uranium there. Gibson stated that he was to go to a producing uranium mine and get samples from the dump pile and then mix this material in with the cuttings from two specific

[41] Ibid. at 206–207.
[42] Ibid. at 194.
[43] Ibid. at 91.

holes that were drilled. Gibson said he told Schauss that he refused to do this.[44] Shortly after that, Schauss hired Raymundo Chico, a consulting geologist, to prepare a report on the uranium potential in the Red Desert based on the exploratory drilling that was done.[45]

Under Wyoming law, defrauding, cheating or swindling by salting a claim is a felony. Section 30.22 of the Wyoming statutes states:

> Any person or persons who shall defraud, cheat, swindle or deceive any party or parties in relation to any mine or mining property by 'salting,' or by placing or causing to be placed in any lode, placer or other mine, any genuine metals or material representing genuine minerals, which are designed to cheat and deceive others, for the purpose of gain * * * shall be guilty of a felony, and upon conviction thereof shall be fined in a penal sum of not less than fifty dollars, or imprisoned in the penitentiary for not more than three years.

In his testimony, Mr. Schauss identified the handwriting on the map as his own, but denied ever having given it to Mr. Gibson or instructing Gibson to salt any claims. He stated that he was unable to recall the circumstances which prompted him to draw the map, but offered as a possibility that in "shooting the bull" with friends, he may have illustrated a story that happened to him, or that happened to someone else who told it to him, concerning a situation where someone attempted to salt some claims. Mr. Schauss was unable to satisfactorily explain why, if in fact he was illustrating a salting situation which had occurred in the past, the notations on the map in his handwriting were in the future tense: "Put just a small amount in these cutting piles at the same level" and "Don't put any in this hole" and "These 4 piles also some in the big cutting pile."[46]

It is noted that Schauss' handdrawn map identifies one of the four holes as "No. 13." Mr. Gibson testified that the map relates to claims located on the north side of either the M or Ben or Charley claims in the Red Desert. From the details of the map (road, dry lake bed, etc.) and the second hole to the left of hole "No. 13" being described as the "last hole west," it is clear and evident that this map relates to holes 12, 13, 14, and 15 which were drilled by Specialized Drilling Service in September–October 1970, as identified in the Chico report. Further, the contours of Schauss' map and other identifying data make it perfectly clear that hole "No. 13" on his map was drilled in Section 11, Township 24 North, Range 98 West as identified on both the official topographical map of the U.S. Geological Survey, Department of the Interior, and the Chico maps of the area. The Schauss map was furnished to the subcommittee by Mr. Gibson, who retained possession of it from the time Mr. Schauss gave it to him in 1970.

On November 21, 1978, the subcommittee determined through WPPS' Washington, D.C. counsel that as of September 1, 1978, some 2,700 of the 18,600 Red Desert claims had been restaked by Fremont at WPPS' request. Thus far, the expense of this restaking has been borne by Fremont, although Fremont is attempting to get WPPS to pay the cost. In addition, no assessment affidavits have been filed for the 18,600 Red Desert claims for the assessment year ending September 1, 1978. WPPS' counsel advised that approximately $1 million was expended during the 1978 assessment year, which would cover about 10,000 of the claims. Under Wyoming mining laws,

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[44] Ibid. at 341.
[45] Ibid. at 119–121.
[46] Ibid. at 103.

the assessment affidavits must be filed within 60 days after the work is completed and the work must be completed by September 1 each year. Thus, the assessment affidavits should have been filed by November 1, 1978. As of November 21, 1978, they had not been filed, meaning that Fremont is delinquent in its filings.

WPPS' counsel also advised that WPPS has not reached a decision as yet concerning whether to exercise its option on the claims. WPPS has until March 14, 1979, to do this.

VII. Gulf Oil Corporation Claims in Medicine Bow National Forest, Carbon County, Wyo.

The subcommittee's investigation disclosed that in one instance a major oil company (Gulf) was directly involved in improper claim-staking practices.

In 1971, John MacGuire's company located and validated 198 uranium lode mining claims for Gulf Mineral Resources Co., a division of Gulf Oil Corp., in the Medicine Bow National Forest, Carbon County, Wyo.

Four years later, Gulf decided to acquire additional mining claims adjacent to the group of 198 Bow claims. Gulf, using its own staking crew instead of contracting for the service, located 247 Bow claims during the period July 8–25, 1975. Location certificates for these 247 claims were filed by Gulf in the Carbon County Courthouse, Rawlins, Wyo., on August 19, 1975.

All 247 Gulf location certificates, which are sworn to and signed by a Gulf employee before a notary public, show that the discovery (or validation) work required by Wyoming law consisted of drilling five holes, each a minimum of ten feet deep, on each claim and that Gulf performed this drilling work during the period August 21 to September 2, 1975. This, of course, is after the claims were recorded on August 19, 1975. In other words, Gulf attested to an event which had not yet occurred.

When John MacGuire learned that Gulf had recorded the 247 Bow claims, he had his foreman, Larry Johnson, check the claims and found they were improperly staked and that no drilling had been done. MacGuire then overstaked 43 of Gulf's 247 claims on August 24, 1975, performed the validation drilling on 17 of the 43 claims between September 22–24, 1975, and recorded those 17 claims on October 16, 1975. He did not drill the remaining 26 claims and thus did not record them.

On August 25, 1975, the day after he overstaked the 43 claims, John MacGuire advised Gulf's Denver office by letter that he had overstaked claims in their Bow group because Gulf had filed false affidavits stating the validation drilling had been completed when, in fact, the work had not been done. He questioned Gulf's ethics and indicated he would advise his lawyers to include Gulf in a damage suit he had recently filed in Federal District Court against Kerr-McGee, Conoco, and Phillips for improper claim staking practices.[47]

Gulf did not reply to MacGuire's letter of August 25. However, on August 27, 1975, Gulf contacted Ute Engineering and Surveying Co. of Delta, Colo., and arranged for them to perform the validation

[47] Ibid, at 305.

drilling on the 247 Bow claims at a price of $10,500. Gulf confirmed this agreement by letter to Ute Engineering on August 28, 1975.[48]

Records of the Carbon County Courthouse reflect that on November 3, 1975, Earnest Schaaf of Ute Engineering and Surveying Co., filed location certificates for 247 Ute claims, which are identical to the 247 Bow claims filed by Gulf on August 19, 1975. According to the location certificates, the Ute claims were located between September 9–26, 1975. While the Ute location certificates indicate that the nature of the discovery work performed was the drilling of five holes not less than ten feet deep each, both the date and the identity of the person or company performing the drilling are blank on 246 of the certificates. One certificate, for the Ute claim number 199, shows the drilling was done on September 25, 1975, but does not reflect by whom.

Subsequently, Larry Johnson, MacGuire's foreman, checked some of the Ute claims and found they were still invalid due to improper staking and short holes (1- or 2-feet deep, instead of 10 feet). MacGuire wrote to Gulf chairman Jerry McAfee in January 1976, advising him of the situation.[49] He received a reply dated February 9, 1976, from Gulf's lawyer in Houston advising that Gulf's Denver office had been requested to conduct a thorough investigation into the matter.[50] Gulf's Denver office advised MacGuire by letter of February 10, 1976, that "Gulf is not asserting any rights" to the Bow claims "which we filed in August 1975," but was claiming all rights accruing by reason of the Ute claims, which were located for Gulf.[51]

On January 31, 1977, Ute Engineering and Surveying Co. quit-claimed 230 of the 247 Ute claims to Gulf. The remaining 17 claims were the ones which MacGuire had overstaked and apparently those were not quit-claimed to Gulf.

Earnest Schaaf, an independent claim staker and former partner in Ute Engineering and Surveying Co., was interviewed by the subcommittee staff in August 1977, and advised as follows: he was contacted on August 27, 1975, by Wes Reeves of Gulf's Denver office to do validation drilling on Gulf's 247 mining claims in the Medicine Bow National Forest. Reeves told him that John MacGuire had overstaked some of Gulf's claims and Reeves wanted Ute Engineering to do the validation drilling as soon as possible. Schaaf was unfamiliar with the terrain in the Medicine Bow. Reeves told him it was mountainous and that his crew should pack in portable drills.

Schaaf took a crew to the Medicine Bow in early September 1975, and found that as much as 40 percent of the terrain was very hard ground due to the amount of hard quartz and granite in the area. Schaaf found the drilling was quite difficult and told Reeves that there would be instances where it would be impossible to comply with the law with the portable drill equipment. Reeves told him to do the best he could. Reeves later asked Schaaf how many ten foot holes he was able to drill, and Schaaf told him "very few." Schaaf said the Medicine Bow claims were poorly staked in that most have only discovery monuments but lack corner posts and side centers.

Questioned as to why the Ute location certificates which he signed and recorded contain no information concerning the date of the drilling

[48] Ibid. at 306.
[49] Ibid, at 307–308.
[50] Ibid, at 309.
[51] Ibid, at 310.

and the identity of the person or company who did the drilling, Schaaf said he could not recall whether this was deliberate. He said, however, that he was glad that the information was missing from the certificates he filed because he knew the holes were not ten feet deep, and he would not attest to something that was not true.

In August 1977, the subcommittees staff interviewed personnel of Gulf's Denver office about the Medicine Bow claims. They advised that the filing of Gulf's location certificates prior to the dates the validation drilling was alleged to have been done was simply an error on Gulf's part. They said that the certificates were typed and prepared in advance of the dates it was anticipated the drilling would be done, simply as a matter of convenience, and that Gulf's land agent mistakenly filed the documents prematurely.

Gulf's explanation is questionable at best. Over half the 247 location certificates Gulf filed on August 19, 1975, indicated the drilling was performed during August 21–27, 1975; yet, Gulf's initial contact with Ute Engineering was not until August 27th, after receipt of MacGuire's letter informing Gulf that he had overstaked some of its claims. Thus, it would appear that Gulf had no intention of performing the required validation drilling prior to August 27th because Gulf had no drilling equipment of its own at the Medicine Bow site.

In fact, it would appear that Gulf had no intention of doing the validation drilling at all—until MacGuire overstaked the claims. Gulf's reason for contacting Ute Engineering on August 27th to validate the claims was the fact that MacGuire had overstaked them. In addition, Gulf officials advised the subcommittee that when MacGuire raised the question of the validity of Gulf's claims, it was obvious that Gulf's location certificates were void on their face since the affidavits were, in fact, filed prior to the date the alleged work was done.

The subcommittee staff examined Gulf's claims in the Medicine Bow National Forest on August 10, 1977, and found that they were still invalid due to improper staking, noticing and validation. The depth of the holes drilled in the validation work ranged from six inches to two feet, instead of the required ten feet for each of five holes per claim.

VIII. Miscellaneous

During his testimony, John MacGuire noted that evidence of the improper location and validation practices which he had cited could be plainly seen from documents filed by locators in the county courthouses of Wyoming. He pointed out that in one instance an individual filed location certificates for approximately 360 claims, or 7,200 acres, which stated that he had performed all of the discovery drilling (five 10-foot holes per claim, equating to 1,800 holes or 18,000 feet of drilling) on the same day. (The information contained on the location certificates was verified by Subcommittee staff investigation in Wyoming.) Mr. MacGuire submitted that, based on his 12 years' experience drilling in all types of terrain, the drilling of 18,000 feet of hole on 360 claims in one day was a physical impossibility.[52]

At the conclusion of the hearings, subcommittee Chairman John E. Moss commented in part as follows:[53]

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[52] Ibid. at 5.
[53] Ibid. at 234–235.

During my quarter century of chairing and participating in thousands of hours of Congressional hearings covering myriad issues, few have concerned and disturbed me more than the evidence and testimony presented before this Subcommittee the last few days regarding the illegal practices in staking and maintaining phony uranium lode mining claims on public lands. This hearing record is clear—serious abuses of both Federal and State mining laws are now and have been occurring over the past decade.

Accordingly, Chairman Moss took the following action:

(1) By letter dated November 8, 1977, he requested that the Securities and Exchange Commission (SEC) conduct a thorough investigation concerning the various mining claim transactions involving the several companies controlled by Messrs. Murphy and Schauss over the years to determine whether any of those activities violated Federal statutes and regulations of the SEC and/or the Internal Revenue Service.[54] As of November 1978, the SEC's investigation into those matters was continuing.

(2) By letter dated November 15, 1977, to the Secretary of the Interior, he referred to the October 21, 1977, meeting between subcommittee staff representatives and officials of the Bureau of Land Management (BLM) at which were discussed the matters disclosed at the hearings and BLM's plans concerning the recordation of mining claims and the filing of evidence of annual assessment work in accordance with the provisions of the Federal Land Policy and Management Act of 1976. He requested to be advised concerning the procedures BLM has for determining whether the location certificates and assessment affidavits now being recorded with BLM offices are accurate, and what civil or criminal sanctions, including prosecution under 18 USC 1001 (filing false statements with the Federal government), are available when it is determined that false statements have been filed with the BLM.[55] The Secretary of Interior replied by letter dated January 4, 1978.[56]

(3) By letter dated April 7, 1978, he forwarded the hearing record to the attorney general of Wyoming for the assistance of his office in cooperation with the investigation being conducted by Daniel Burke, prosecuting attorney of Natrona County, Wyo., into illegal claim-staking practices, including the filing of false location certificates and assessment affidavits.[57] During his testimony, Mr. Burke discussed the scope of the investigation by his office and the fact that he had requested the attorney general of Wyoming to assist in the investigation and prosecution of the individuals involved.[58] Although the attorney general of Wyoming has assured Mr. Burke of the cooperation of his office and has assigned an attorney-investigator on his staff to conduct the inquiries, unfortunately, as of November 1978, nothing has been done in this regard by the attorney general's office.

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[54] Ibid. at 315.
[55] Appendix 1.
[56] Appendix 2.
[57] Appendix 3.
[58] Hearings, supra note 5, at 22–28.

SEPARATE VIEWS OF HON. JAMES M. COLLINS

There is a great deal in the subcommittee report with which I fully agree. In fact I believe that the investigation into uranium lode mining claims was one of the best efforts of the 95th Congress for our Subcommittee. I do, however, have disagreements with certain of the findings in this report which are not supported by our record, and it is for the purpose of enumerating my differences with those findings that I offer these views. With what I consider to be the most important aspects of this report, I agree with it totally.

I would first like to detail my areas of agreement with the report, because there is much common ground. First of all, I agree totally with what I consider to be the principal conclusion of the report: that millions of acres of uranium-potential public lands are not being explored, because it is being tied up by unscrupulous claim speculators. The record of our Subcommittee clearly supports this conclusion. Second, I further agree with the recommendations contained in the report to remedy the problem areas which we have uncovered. Third, I am in full accord with the report's finding that enforcement of the mining laws by the Bureau of Land Management and local officials in the various involved states has been almost totally lacking, which I believe pinpoints the principal cause of the problem. Without the necessary enforcement, no law no matter how all encompassing or expertly drafted will achieve its desired end. I, therefore, strongly concur with the demand of the report that the Bureau of Land Management begin faithfully executing the laws within its purview.

My primary disagreement with the report is the finding that major energy companies are encouraging and condoning the practices of the claim speculators who are filing claims but who are not performing the required assessment work on their claims and then compounding their conscious omissions by filing false affidavits indicating that they have performed the required work. The record simply does not support the proposition that major energy companies are encouraging and condoning these abusive practices. In fact, the record shows that the major energy companies are seriously interested in mining the lands and performing the work necessary to validate and retain claims.

Quite frankly, I am very disappointed with the subcommittee's finding concerning the major energy companies. It seems as though in today's world that anytime a problem area is identified in which major energy companies are in any way participants, that an effort is made to portray them as the cause or one of the causes of the problem. This subcommittee has adopted this approach many times in the past 4 years, especially in the energy area, and the reasons for so doing have been to avoid addressing seriously the reason for energy problems. It is far simpler to blame the major energy companies, but the result is to endanger any serious discussion of solutions to the problems. I did not think that this investigation was going to fall victim to that same rhetorical opportunity.

Requesting Office

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

REQUISITION/ORAL ORDER

Page of pages

Requisition number

Date 2/9/79

Requisitioned by *(Signature)*

Title

Requisition approved by *(Signature)*

Title

Deliver to *(street address)*

D-310

Required delivery date

ORGAN. STATE	ORGAN. OFC.	AV. YR.	ACTIVITY	WORK CODE	PROJ. OR IDENT.	GSA 1473	AMOUNT

Source of supply, if known

Committee on Interstate and Foreign Commerce.

Contract No.

ITEM NO.	DESCRIPTION OF SERVICE OR ITEM INCLUDING STOCK NUMBER *(Double space between items)*	QUANTITY	UNIT	ESTIMATED UNIT PRICE	ESTIMATED TOTAL	ORDERED UNIT PRICE	ORDERED TOTAL
1.	Uranium Lode Mining Claims On Federal Lands., by the Subcommittee On Oversight Investigations Of The Committee On Interstate And Foreign Commerce. 1978.	1					
	2/20/79						

Contract No.

Discount for prompt payment

GRAND TOTAL

Time of Delivery

Ship Via

F.O.B. Point

Order No.

Date

Vendor

Quoted By

(Instructions on reverse of Purchasing Copy)

Purchased By

Title

Form 1510–18 (November 1976)

REQUISITIONER

DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

REQUISITION ORAL ORDER

Requisitioned by (Signature)

Title

Requisition approved by (Signature)

Title

Delivery (Street address)

Requested delivery date

CHARGE		ACTIVITY	WORK CODE	NOT. OF IDENT	BSA	AMOUNT
STATE	OFC					

Source of supply

Contract No.

ITEM NO.	DESCRIPTION OF SERVICE OR ITEM INCLUDING STOCK NUMBER (Describe, from back-orders if any)	QUANTITY	UNIT	ESTIMATED UNIT PRICE

Contract No.

Discount for back or early pay

Vendor

Time of Delivery

Ship Via

F.O.B. Point

Order No.

Date

Quoted By

Purchased By

Has information on reverse of Purchase Order been delivered?

The approach taken in the subcommittee report to lay blame on the major energy companies is not a novel one. It has been successfully exploited for decades now. President Franklin D. Roosevelt successfully exploited it with his use of terms "economic royalist" and "economic tyranny," to describe certain segments of the business community. Roosevelt constructed a demand in order to create the expectations in the American populace that the Federal Government can and should deal with great economic questions through direct Government intervention or regulation. Roosevelt was obviously able to sell the idea to many Americans who now look exclusively to Washington and the Federal Government for solutions to problems. The progeny of Roosevelt's efforts has been increasing Federal regulation of the marketplace, much of which has created market and economic distortions. Now, however, rather than admit that the Federal Government is in anyway at fault when economic problems occur, the approach is to set up a "Rooseveltian-type demon" and blame it. This approach never solves any problems; it exacerbates them, because it simply obfuscates matters.

I say that I am disappointed and I truly am. This sort of "demon" approach was uncalled for in this report because aside from the accusations about the major energy companies, the report is factual, and well reasoned. The report did not excuse the Federal Government from blame and it also found real culprits, the claims speculators, not associated in any way with the major energy companies. The report recommends legislative change, because of the clear inadequacy of the present system of claim and assessment filing, which will not be unduly burdensome on legitimate operators, a very positive approach. I wish the report had left it at that, because I could then have given it my wholehearted support.

The problem as I see it is that claims speculators, such as those identified in the report, are recording claims, and not performing the required assessment work, but filing false affidavits saying that they did. A major energy company or anyone else, for that matter, wishing to mine in an area first must go to the county court house in the county where the land is located for the purpose of determining whether someone has already located a claim in the area that is of interest to them. If a claim and assessment affidavits for the various years in which the claim has been held, have been filed and they are in good order; the prospective claimant has three choices: first, he could forget about the matter entirely and look elsewhere; second, he could purchase an exploratory interest from the claimant; or third, he could investigate further to see if the claim is being properly held by the claimant.

If the prospective claimant follows option three, which is the one the Subcommittee report implicitly advocates, he can do several things. First, he can go out to where the claim is located to see if it can be ascertained by inspection if the necessary assessment work appears to have been done which is not always an easy thing to determine. Second, he could check with the surface owner to see if he has any knowledge of mining activities on the claim.

This type of information is also not always of the greatest reliability. If the prospective claimant concludes on the basis of this further

investigation that the claim is being improperly held, because of the failure of the senior claimant to perform the necessary assessment work, the prospective claimant can overstake and file a claim of his own behalf. The problem with this overstaking practice is that it immediately renders the prospective claimant susceptible to a lawsuit by the senior claimant and the uncontradicted testimony of Mr. Humble of Exxon is that the courts have overwhelmingly ruled in such cases in favor of the senior claimant. This is why major energy companies do not overstake, not because of some unwritten code of the west. Overstaking is a mere self-help remedy, but not a very effective one.

The above discussion all points out the basic problem here, which is that if state and federal authorities do not enforce the mining laws in order to eliminate abusive claims practices, the only remedy left is the private one of overstaking. This is simply not an efficacious remedy in today's litigious world.

In summary, I would just repeat that I have no objections to recommendations contained in this report for they are reasoned and prudent. My only objections to the report are the treatment that the major energy companies received.

JAMES A. COLLINS.

Appendix I

House of Representatives,
Subcommittee on Oversight and Investigations
of the Committee on Interstate and Foreign Commerce,
Washington, D.C., November 15, 1977.

Hon. Cecil D. Andrus,
Secretary of the Interior,
Washington, D.C.

Dear Mr. Secretary: This Subcommittee held hearings in mid-October to examine the methods and procedures by which uranium lode mining claims are located, maintained, and developed on public lands.

Evidence and testimony presented at the hearings disclosed widespread illegal claim-staking practices. Serious abuses of Federal and State mining laws have occurred including the unlawful staking and locating of mining claims, the failure to perform required annual assessment work of $100 per claim, and the filing of false affidavits with county authorities attesting that the required work was done.

On October 21, 1977 Subcommittee staff representatives met with Assistant Director Frank A. Edwards, Bureau of Land Management, and his staff to discuss the matters disclosed at the hearings. A copy of the hearing transcript was furnished to Mr. Edwards at that time. In addition, they discussed BLM's plan for the recordation of mining claims and the filing of evidence of annual assessment work, in accordance with the provisions of the Federal Land Policy and Management Act of 1976.

Since that meeting, my staff has learned of a situation in Colorado involving the alleged improper staking and locating of some 300 uranium lode mining claims in the Pike National Forest which were recorded recently with the BLM office in Denver. I would appreciate your having the BLM look into this matter to determine whether the allegations are true and advising me of the results. Enclosed is a memorandum prepared by my staff concerning this situation.

In addition, please advise me what procedures BLM has for determining whether the location certificates and assessment affidavits now being recorded with the BLM offices are accurate, and what civil or criminal sanctions, including prosecution under Title 18, Section 1001, U.S. Code, are available when they determine that false statements have been filed with their offices.

Thank you for your assistance in this matter.

Sincerely,

John E. Moss,
Chairman, Subcommittee on Oversight and Investigations.

Appendix 2

U.S. Department of the Interior,
Office of the Secretary,
Washington, D.C., January 4, 1978.

Hon. John E. Moss,
House of Representatives,
Washington, D.C.

Dear Mr. Moss: This is in response to your letter of November 15, 1977, regarding the alleged improper staking and locating of uranium lode mining claims in the Pike National Forest in Colorado by Homestake Mining Company. Also, you asked to be advised as to what procedures the Bureau of Land Management (BLM) has for determining whether location certificates and affidavits of assessment work now being recorded with the BLM State Offices are accurate and what civil or criminal sanctions are available for filing false documents.

On November 21, 1977, a geologist from the BLM Colorado State Office drove up to the Kenosha Pass area and spot checked some of the lode mining claims staked by Homestake Mining Company. Due to inclement weather conditions, including snow, he could only walk the end lines of claims KP 11–12, KP 13–14, and KP 15–16, and found that the claim corners were properly marked with 4 inch by 4 inch posts, and that the discovery points contained the proper notice of location. Due to snow conditions, he was unable to ascertain whether the side lines were properly staked. Based on this brief field check, it is his opinion that the claims have been located in conformance with both Federal and State laws. A full field check of these claims can be made next Spring, after the snow has left the area, if you so desire.

We are not aware of any Federal criminal sanctions for filing false affidavits or location certificates other than 18 U.S.C. 1001. Because the statute only covers a "matter within the jurisdiction of any department or agency of the United States," it may be difficult to prosecute mining claim owners who file false documents which are originally meant to be filed under State law. However, the broad interpretation given this statutory language by the courts may permit prosecution under the law. This is the decision of the Justice Department and the U.S. Attorney. However, if we are able to determine that false statements are contained in documents filed with the BLM, we would request the Department of Justice or the U.S. Attorney to consider criminal prosecution. We may also share any information we obtain with State and local authorities for possible criminal prosecution under State and local laws.

The recently enacted recordation provisions in the Federal Land Policy and Management Act of 1976 will also be helpful in alleviating this potential problem. First, we will be aware of the claims and will be able to find and examine them on the ground if the need arises. Second, we could, to some extent, ascertain that some claims may have been fraudulently located or that false affidavits have been filed. For example, the data may indicate location of a large number of claims by a single individual within an unreasonably short time frame. This would be cause for us to investigate further. Third, claims improperly filed would be void. If location certificates or assessment work affidavits are false and the claims have not been properly located or annual assessment work has not been performed, these claims may be contested by the Federal Government. Such contests would be based on improper location or abandonment of the claim.

To assist in our use of this statute to prevent filing of false affidavits, BLM is considering amending the regulations to require recordation of notices or certificates of location and evidence of annual assessment work under section 314 of the Federal Land Policy and Management Act of 1976. The amendment will put owners on notice that filing false affidavits with BLM may subject them to criminal penalties under 18 U.S.C. 1001.

Because of the large number of affidavits which are filed and the time and expense required to corroborate the information, it is very difficult to eliminate this potential problem without a significant increase in Departmental resources.

In the final analysis the most efficient way to correct this and other, more serious abuses of the present Mining Law is to enact new legislation to replace the Mining Law of 1872. The Department has developed and submitted such a bill to Congress. In our view, H.R. 9292, which would place all presently locatable minerals under a leasing system, would eliminate the abuses of the present location-patent system.

Sincerely,

CECIL D. ANDRUS,
Secretary.

Appendix 3

House of Representatives,
Subcommittee on Oversight and Investigations
of the Committee on Interstate and Foreign Commerce,
Washington, D.C., April 7, 1978.

Hon. V. Frank Mendicino,
Attorney General,
Cheyenne, Wyo.

Dear Mr. Mendicino: As you may be aware, the Subcommittee on Oversight and Investigations held hearings this past October on uranium claim staking practices involving Federal lands in Western states, concentrating on claims practices in the State of Wyoming. Testimony presented to the Subcommittee during the hearings revealed widespread abuses of both the Federal and State mining laws.

A principal area of abuse concerns the filing of false affidavits of location and assessment as an attempt by certain unscrupulous individuals or firms to improperly gain and hold potential uranium acreage for personal gain. As a result, legitimate exploration activities are deterred and the public domain mineral lands are not being adequately developed.

The County Prosecuting Attorney of Natrona County, Mr. Daniel M. Burke, testified that the practice of filing false affidavits constitutes a violation of 6–154.1 of the Wyoming statutes, a felony under Wyoming law. Mr. Burke further informed the Subcommittee that his investigation revealed that phony claim staking practices, including the filing of false assessment affidavits, were widespread and involved lands throughout the state of Wyoming.

Based on the Subcommittee's hearings, I am of the opinion that a most important method of curbing the existing abuses of the mining laws is a strong enforcement posture, including criminal prosecution of those persons executing false oaths relative to mining claims. Thus, I was gratified to learn that your office is cooperating in the investigation of these matters, especially in view of the statewide nature of the problem.

The Subcommittee's hearing record has recently been published and is being forwarded for your use. If additional information regarding the Subcommittee's investigation will be of assistance to your office, please contact Messrs. Benjamin M. Smethurst or Richard A. Frandsen at (202) 225–4441.

Sincerely,

John E. Moss,
Chairman, Subcommittee on Oversight and Investigations.

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APPENDIX 4

THE STATE OF WYOMING,
Cheyenne, Wyo., April 20, 1978.

Hon. JOHN E. MOSS,
Chairman, Subcommittee on Oversight and Investigations,
Rayburn House Office Building,
Washington, D.C.

DEAR CONGRESSMAN MOSS: Thank you for your letter of April 7, 1978, and for the hearing record which you enclosed therewith. At the time this matter was brought to my attention by County Attorney Daniel M. Burke, I did not have personnel capable or competent to conduct the investigation necessary to insure a thorough investigation. Fortunately, I now have an individual on my investigative staff who, in addition to being an investigator, is also an attorney and who, I am sure, will be able to assist me in providing the type of strong enforcement of State mining laws to which you refer in your letter.

I am sure that we will be in touch with your Subcommittee staff concerning this investigation in the very near future.

Sincerely yours,

V. FRANK MENDICINO,
Attorney General.

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